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ABSTRACT

Designed to provide the reader with general background information in the area of American Indian child abuse and neglect law and to present a framework in which individual abuse or neglect cases may be analyzed, this report is divided into four sections. The first section describes features of the jurisdictional conflicts encountered in American Indian Law in general and in Indian Law on child abuse and neglect in particular. The next section describes the policy background and some of the provisions of the Indian Child Welfare Act. The third section briefly describes the variety of legal systems in effect on Indian reservations. The final section compares and contrasts child abuse and neglect-related elements of the 51 tribal codes that form the database for this paper. Appendixes supplement the discussion with information on the court systems used by and the code provisions of specific Indian tribes. (Author/CM)

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AMERICAN INDIAN LAW: RELATIONSHIP TO CHILD ABUSE AND NEGLECT

A special Report from the National Center on Child Abuse and Neglect

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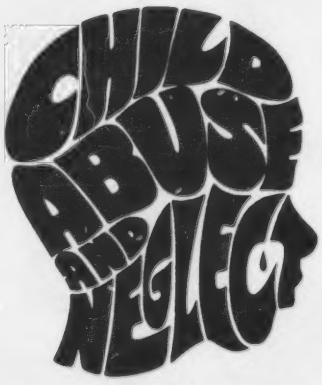

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I. INTRODUCTION

This report reviews the present status of American Indian child abuse and neglect law. Its purpose is twofold: to provide the reader with general background information in this developing area of the law and to present a framework in which individual abuse or neglect cases may be analyzed.

The first section of this report describes features of the jurisdictional conflicts encountered in American Indian law in general and in Indian law on child abuse and neglect in particular. The next section describes the policy background and some of the provisions of the Indian Child Welfare Act, a recent major federal enactment that accords great value to Indian cultural and family preferences in the legal treatment of children. The third section briefly describes the variety of legal systems in effect on Indian reservations. The final section compares and contrasts child abuse and neglect-related elements of the 51 tribal codes that form the database for this paper. Approximately 79 tribes or reservation groups have such codes. Appendixes supplement the discussion with information on the court systems used by and the code provisions of specific Indian tribes.

Because Indian child abuse and neglect is a relatively new area of the law, information is scarce and, in many instances, difficult to locate and verify. Extensive investigation uncovered no single, complete collection of Indian tribal law. The reader, therefore, should be aware that the information base for this initial effort to describe American Indian law on child abuse and neglect in many cases may be incomplete, inaccurate, or out of date. In addition the Indian tribal codes are in many ways *not* comparable to state or federal statutes.

Much of the analysis and discussion contained in this report compares elements of American Indian law and procedure with elements of federal and state law and procedure. This approach was taken in order to provide readers more familiar with non-Indian forms with a familiar frame of reference and for ease of organization. There was no intent to make a values-oriented comparison or to suggest that Indian forms ought to be Anglicized. There may also be apparent gaps in topics one would expect to have covered, but this is a reflection of the content of the codes we were able to collect. Consequently, this report has noticeable gaps, including an almost total absence of discussion of child protective services organization.

Because this is a beginning effort to explicate American Indian law on child abuse and neglect it does not offer judgments about what should be or evaluate what is. We hope that readers with access to more complete or timely information or sets of tribal codes will contact us so that any subsequent report will have a more complete and satisfactory information base.

II. JURISDICTION

Jurisdiction is defined generally as the power of a court to hear a particular case. In order for a court's jurisdiction over a case to be valid, it must have jurisdiction over both the subject matter of the case and parties in the case. Subject matter jurisdiction is the power of the court "to hear and determine cases of a general class to which the proceeding belongs."[1] For the purposes of this report, jurisdiction refers to the power of a court to hear a custody proceeding, which is often the mechanism for dealing with child abuse and neglect in American Indian settings. If the court has the power to hear custody proceedings, then it must be determined whether the court has the power to hear a particular case involving a particular set of people, or parties. This party-related requirement is known as personal jurisdiction or jurisdiction over the person.

The grant of jurisdiction is tied up with another concept, that of sovereignty. Sovereignty is a difficult concept to define concisely, but it is generally understood as "the supreme, absolute, and uncontrollable power by which any independent state is governed,"[2] or "the absolute right to govern" a particular area.[3]

A state or federal court can receive its grant of power or jurisdiction from many different sources, including the U.S. Constitution, federal statutes, a state constitution, and state statutes. When, however, a case arises within the confines of an Indian reservation, who has the right to exercise jurisdiction over it? The answer to that question is very complicated and depends on the interpretation of various federal and state actions, treaties, and legislation, some of which date from the last century. The following discussion attempts to develop a framework for determining where jurisdiction in a particular case lies. The myriad of possible subject matter issues, which are complicated by often overlapping and piecemeal grants of jurisdiction by the federal government to the tribes and the states, renders a clear statement of jurisdictional rules impossible within the scope of this paper.

Federal Jurisdiction

The United States government's power over American Indian people stems from two sources: the Constitution, particularly the commerce and treaty making clauses, and the government's numerous early treaties with the various Indian tribes. Over the years the judiciary has recognized, in a long line of cases, Congress's plenary power vis-a-vis the power of the states over Indian affairs. Those same cases, however, established the Indian tribes' right to internal sovereignty. The concept of Indian sovereignty began to erode, however, and Congress began to assert more influence in internal Indian affairs. One manifestation of that encroachment was the passage of the Major Crimes Act,[4] which granted jurisdiction to the federal courts over certain enumerated crimes, mostly felonies, occuring on the reservation. The Major Crimes Act remains the one major federal statute that grants federal courts jurisdiction over Indians. Thus, criminal acts generally classified as felonies are normally within the jurisdiction of the federal court having general jurisdiction over the area that includes the reservation. The federal court, however, may share that jurisdiction with the state in which the reservation is located.

State Jurisdiction

Jurisdiction of state courts over Indian affairs arises either from creation by the state government or from delegation by the federal government. State created jurisdiction arises only where reservations were created by and may be owned by that state. This paper, however, is concerned only with state court jurisdiction that has been delegated by the federal government, which is the more usual and complicated source of state court authority on the reservation.

Generally, this delegation of jurisdiction to state courts was accomplished either by geographically specific legislation or under the authority of P.L. 280.[5] Some states, for example, New

York and Kansas, received jurisdictional grants by special legislation. Such legislation granted New York concurrent jurisdiction in criminal matters and exclusive jurisdiction in all civil matters.[6] The Kansas act extended only exclusive criminal jurisdiction to courts of that state.[7]

Most states, however, derive their power over Indian tribes from P.L. 280. States exercising jurisdiction under this statute fall into two groups, specified states and permissive grant states. Six states (California, Minnesota, Nebraska, Oregon, Wisconsin, and Alaska) were given criminal and civil jurisdiction over acts or causes of action occurring on reservations within their borders. Four reservations were exempted: Red Lake Reservation in Minnesota, Warm Springs Reservation in Oregon, Menominee Reservation in Wisconsin, and the Metlakatla Reservation in Alaska.[8]

The remaining states with Indian populations received permission to assume, through appropriate legal action, subject matter and personal jurisdiction to whatever extent the state desired. Appropriate legal action consisted of either amendment to the state constitution[9] (Washington, Montana, and New Mexico) or state enactment of affirmative legislation that provided for assumption of jurisdiction over a tribe or group of tribes[10] (Colorado, Florida, and Iowa). Disputes over whether state actions attempting to assume jurisdiction have been legally sufficient have further complicated the jurisdictional issue.

During the years following the passage of P.L. 280, various Indian tribes vehemently protested the federal action, and their activities resulted in amendments to the law. The amendments permitted states that had assumed jurisdiction over tribes under P.L. 280 to retrocede, or turn back, to the federal government the power they had assumed. Some states, like Nevada, have done so. Unfortunately, comprehensive information regarding what powers have been retroceded by which states is not readily available. This lack of information has served to complicate further already complex jurisdictional conflicts and any attempts to research and analyze them. In addition, state and federal courts have been flooded with litigation on these issues, but the resulting decisions provide no clear, unified precedents.

Local Jurisdiction

Whatever power local governing bodies (counties or cities) exercise over Indian reservations results from a delegation of the state's existing power to the local authority. Much of the discussion under state jurisdiction concerning problems with delegated power also applies here.

Tribal Jurisdiction

Tribal jurisdiction is based largely on the tribe's inherent sovereignty as modified by any existing treaties. As discussed in the paragraphs on federal jurisdiction, significant judicial precedent exists for recognizing the tribe's power to establish a court system and to grant it jurisdiction. Congressional legislation, such as the Indian Reorganization Act of 1934[11] and, more recently, the Indian Child Welfare Act (ICWA), P.L. 95-608[12], has sought to reestablish tribal jurisdiction among the various tribes. The latter Act is discussed in some detail in the following section.

III. THE INDIAN CHILD WELFARE ACT

Background

As noted previously, Congress has plenary power to deal with the various Indian tribes. This power stems from the commerce and treaty-making clauses of the United States Constitution. Over the years, a special relationship evolved between Congress and the Indians based on treaties and statutes, with Congress gradually assuming the role of the Indian tribes' protector/guardian. This role has been recognized not only by Congress but by the Supreme Court as well.

In the late 1960s and early 1970s, Indians began to level allegations of institutional child abuse and neglect against federal and state agencies, claiming that the agencies' practices were resulting in the breakup of increasing numbers of Indian families. Congress held hearings through the mid- to late-1970s to investigate whether there was a basis for the Indians' allegations. The hearings indicated that an alarmingly high percentage of Indian families were unwarrantedly broken up.[13] Summarizing their findings in Section 2, clause 5 of the Indian Child Welfare Act (ICWA), Congress stated "that the states, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families."[14] Recognizing that children are the Indian tribes' most important resource, Congress passed the ICWA "to protect the best interests of the Indian child and promote the stability and security of Indian tribes and families"[15] by setting minimum standards for the removal and placement of Indian children that reflect Indian cultural values. By expressing such respect and encouragement for Indian cultural values, Congress was establishing a new national policy toward the Indians.

Applicability of ICWA

For purposes of the ICWA, an Indian child is any unmarried person under the age of 18 who is either (1) a member of an Indian tribe or (2) is eligible for membership in an Indian tribe *and* is the biological child of a member of that tribe.[16] The Act applies to any state court proceeding involving an Indian child that concerns foster care, termination of parental rights (TPR), preadoptive placement, or adoptive placement. Because such proceedings may stem from instances of child abuse or neglect, the policies embodied in the Act affect Indian child abuse and neglect law. In such proceedings, the ICWA standards prevail except where other applicable federal or state law provides the Indian child with greater protection.[17] In addition, judgments rendered by tribal courts under the ICWA must be accorded full faith and credit by all federal, state, territorial, and tribal courts.[18]

The ICWA does not apply to divorce proceedings or proceedings based on criminal acts. Nor does it prevent emergency removal procedures necessary for protecting a child who is in immediate danger from his environment.[19] Further, Section 113 of the ICWA excludes any proceeding initiated or completed prior to 180 days before the ICWA was enacted. The ICWA does, however, apply to any subsequent proceeding in the same matter.[20]

Purpose of ICWA

The thrust of the ICWA is twofold: (1) to place jurisdiction, wherever possible, over Indian child custody proceedings with the appropriate tribes, and (2) to regulate Indian child custody proceedings which remain in state courts by establishing certain safeguards.[21] To accomplish the first aim, a distinction was drawn between tribes where the state did not have subject matter jurisdiction over child custody matters and tribes in states where jurisdiction had been assumed over these matters under either specific federal legislation or P.L. 280.

1. *Jurisdiction Under the ICWA*

The ICWA vests exclusive jurisdiction over Indian child custody proceedings with the child's tribe where the child is domiciled on or resides within the reservation if the state does not have jurisdiction over those proceedings under existing federal law.[22] If, however, the affected Indian child is not domiciled on or does not reside within a reservation, a different procedure governs. Under these circumstances, the parent, an Indian appointed as custodian, or an Indian child's tribe petitions the state court to turn over jurisdiction to the tribal court. Once petitioned, the state court is required to transfer the case to the tribal court unless either the parent objects or good cause to the contrary is shown.[23] The term "good cause" is not defined in the Act, and, since the ICWA is relatively new, no judicial interpretations of the term have been rendered yet. The tribal court, however, may decline to exercise jurisdiction over the case,[24] thus leaving it in the hands of the state court. The transfer provisions outlined above also apply in proceedings involving an Indian child who is not domiciled on or does not reside within the reservation where the tribal court has reassumed jurisdiction under the procedures discussed in the following paragraphs.

In tribes where the state has jurisdiction over child custody proceedings under prior federal law, the tribe must petition the Secretary of the Interior to reassume jurisdiction over those matters. The petition must set out in detail a suitable plan under which the tribe intends to exercise its jurisdiction. The Secretary must consider the petition and either approve or disapprove the plan.[26] In reaching his decision, the Secretary is to consider: (1) whether the tribe has a membership roll or some other clear means of identifying persons over whom the tribe could exercise jurisdiction, (2) the size of the tribe's reservation, (3) the population base and distribution of the tribe, and, (4) in cases of multitribal reservations, the feasibility of the plan presented.[27]

The Secretary may approve the whole petition, or if he feels the plan presented is not entirely feasible, he may approve part of it. Partial reassumption can be limited either in the scope of the subject matter jurisdiction, such as reassumption of jurisdiction in foster care proceedings but not in termination of parental rights (TPR) proceedings, or in the geographic area in which jurisdiction is reassumed, such as extending reassumption over the reservation land located in one state but not in another.[28]

If the Secretary approves the petition, wholly or partially, a notice of approval must be published in the *Federal Register,* and the affected state or states must be notified. The retrocession and reassumption of jurisdiction become complete 60 days after the publication of notice in the *Federal Register.*[29] Retrocession, however, does not affect a case already in progress at the time the reassumption becomes effective. Under the ICWA, if the Secretary disapproves the petition, he must provide the tribe with the technical assistance necessary to perfect the petition.[30]

The final method by which a tribe can obtain jurisdiction over a proceeding is by reaching an agreement with the state. Such agreements must be made on a case by case basis.[31]

2. *Rights of the Parties in Proceedings Under ICWA*

The second thrust of the Act is to safeguard the rights of the Indian child, his parent, and his tribe in an Indian child custody proceeding. Under the ICWA, in all involuntary foster care and TPR actions brought in state court, the Indian custodian[32] and the Indian child's tribe have the right to intervene at any point in the proceedings.[33] In addition, all parties have the right to examine all the reports, testimony, witnesses, and exhibits upon which the court's decision may be based.[34]

In a voluntary foster care or TPR proceeding brought in state court where the court knows or should know that the case involves an Indian child, the court must notify the Indian custodian and the Indian child's tribe. Notice is to be given by registered mail, return receipt requested, and must describe the proceedings pending in the state court and advise the party of the right to intervene.[35]

If the court cannot determine who the Indian custodian is or the child's tribal affiliation, the court must notify the Secretary of the Interior. Upon receipt of such notice, the Secretary has 15 days to locate the child's custodian and tribe and serve notice on them. In no event is there to be any action in the pending proceeding until ten days after the custodian and tribe are identified

and are in receipt of the court's notice. The Indian custodian and the tribe have the right to a further extension of 20 days, upon request, in order to prepare their case.[36]

The Indian parent also has the right to appointed counsel under Section 102 (b) of the ICWA if the parent or custodian is indigent and if the proceeding involves the removal or placement of the child or is a TPR action. The court may, under the Act, exercise its discretion to appoint counsel for the Indian child where the court finds it would be in the best interests of the child to do so. The Secretary of the Interior will pay the legal fees for appointed counsel upon certification by the state court where the state does not have the funds from which to make the necessary payments.[37]

The ICWA also provides that no involuntary foster care placement can be ordered by a state court in the absence of a finding, supported by clear and convincing evidence, that continued custody of the child by the Indian custodian would be likely to result in serious physical or emotional damage to the child.[38] A similar finding is required in TPR actions, but it must be supported by a higher standard of evidence, that is, evidence beyond a reasonable doubt.[39]

Voluntary Proceedings and Consent Issues

In voluntary proceedings, the Act requires that, in order for consent of an Indian custodian to be valid, it must be made in writing and executed and recorded before a judge of a court of competent jurisdiction. The judge must attach a certificate which verifies that the terms and consequences of the consent were fully explained, in detail, and understood by the Indian custodian. The judicial certificate must also represent that the Indian custodian fully understands English, or, if the custodian is not proficient in English, that the court's explanations and questions were interpreted into a language the custodian understood. The Act also provides that any consent given within 10 days prior to or after the birth of the child, even one conforming to the formalities discussed here, is invalid.[40]

Under the ICWA, an Indian parent may withdraw his voluntary consent to a foster placement, valid under the applicable state law, at any time and have the child returned home.[41] Where the Indian custodian has given valid, voluntary TPR consent, he or she may withdraw that consent at any time prior to the entry of a final decree in the case. After the final decree is entered, consent may be withdrawn only on the grounds that it was obtained through fraud or was given under duress. To withdraw consent given under these circumstances, the parent or custodian must petition the court to vacate the consent. If the court finds one of the above grounds present, the judge shall vacate the consent. Unless state law provides for a longer period, the court may vacate only a consent given within the two years preceding the court's order.[42] Any party, however, may petition the court at any time to invalidate a previous court action upon a showing that certain provisions of the ICWA were violated by the state or the court in its earlier proceeding.[43]

Placement Preferences

Once a voluntary consent has been entered or the court finds that the burden of proof has been met in an involuntary proceeding, the court must use the ICWA's mandatory guidelines or preferences in ordering placements. In making an adoptive placement, the order of preference is, absent good cause to the contrary, first to a member of the child's extended family, then to another member of the Indian child's tribe, and finally to other qualified Indian families.[44]

In a foster care placement, the state court must direct that the Indian child be placed in the least restrictive setting that most nearly approximates his original family and meets his special needs. In addition, the foster placement must be in reasonable proximity to the reservation. Absent good cause to the contrary, the court should direct that efforts be made first to place the Indian child with a member of his extended family; then in a foster home, licensed, approved or specified by the child's tribe; then in an Indian foster home licensed or approved by an authorized, non-Indian agency; and finally in an institution approved by the Indian child's tribe.[45]

The placement preferences set out in the ICWA may be altered by the Indian child's tribe by resolution of the appropriate governing body so long as the preferences relating to foster care placement require placement in the least restrictive setting.

Also, the state court may consider, where appropriate, the preference of the Indian child or custodian in making the placement. The court, however, must give weight to a consenting Indian custodian's desire for anonymity in applying the statute's preferences list.[46]

In applying the statutory placement preferences list, the state court is to apply the prevailing social and cultural standards of the tribal community of the Indian custodian, family, or child. The state must keep detailed placement records setting forth the efforts made to comply with the ICWA preferences list. The list must be made available on request to the Secretary of the Interior or to the child's tribe.[47]

As part of its recordkeeping function under the ICWA, a state court entering a final decree in an adoption proceeding must forward a copy of the decree along with information on the child's tribal affiliation, the names and addresses of the child's biological and adoptive parents, and the agency that handled the case and has the files. If the biological parent filed a confidentiality affidavit, the state court shall forward a copy of the affidavit as well.[48]

When the Indian child attains the age of eighteen, he may apply to the state court which entered the final decree in his case or to the Secretary of the Interior for information concerning his tribal affiliation, biological parents, and other information necessary to protect the Indian child's tribal relationship. If the child's parents filed a confidentiality affidavit, then the Secretary shall certify to the tribe the Indian child's eligibility for tribal membership.[49]

IV. TRIBAL JUSTICE SYSTEMS

Indian courts, in their present form, are only about 50 years old. They were created as a result of the Wheeler-Howard Act, more commonly known as the Indian Reorganization Act,[50] which was the most significant piece of Indian-related federal legislation enacted in the 1930s. The purpose of this 1934 Act, according to the Senate Report, was "To stabilize the tribal organization of Indian tribes by vesting such tribal organizations with real, though limited, authority, and by prescribing conditions which must be met by such tribal organizations."[51] The courts created during this period can be classified as either tribal, traditional, or Code of Federal Regulations (CFR) courts.

Tribal courts, which constitute the largest group, are courts whose jurisdictional bases and applicable law may be found, in whole or in part, in tribally written codes. Approximately 79 tribes or reservations have such codes. Traditional (or customary) courts operate in accordance with long-standing custom passed along from one generation to the next by word of mouth. Currently, 12 Pueblos in the Bureau of Indian Affairs' Albuquerque Area still have traditional court systems. CFR courts are those which were established pursuant to the provisions of Title 25 of the Code of Federal Regulations. They are regulated by Title 25 provisions, as well as regulations promulgated thereunder. About 23 tribes operate under Title 25.

Functionally, there are few significant differences between tribal courts and CFR courts. Once a case enters either system it progresses and is resolved in essentially the same manner. Actual differences between customary courts and tribal and CFR courts are difficult to ascertain because the unwritten nature of the traditional court procedure and law makes it difficult to locate sufficient information for comparison. However, the passage of the Indian Civil Rights Act[52] and other similar federal legislation extending constitutional protections to members of Indian tribes have provided an impetus for procedural and substantive similarities between tribal and CFR courts.

V. REVIEW OF TRIBAL CODE TREATMENT OF CHILD ABUSE AND NEGLECT

Introduction

The following discussion is based on a review of various code provisions of 51 Indian tribes having a tribal court system. It should be remembered that approximately 79 tribes have such codes. The purpose of this section is to analyze these codes for similarities and to provide the reader with a general informational framework, in both procedural and substantive terms, to serve as a guide in understanding tribal Indian child abuse and neglect law. It also should be kept in mind that this report attempts to present an amalgam of characteristics gathered from the 51 codes collected for preparation of this report. None of these codes addresses every aspect of child abuse and neglect law, so portions of the codes have been selected from all of them in order to illustrate current treatment of child abuse and neglect cases in Indian tribal code courts. This report represents an attempt to catalog features that are present in the codes rather than to suggest which features ought to be included in them. Readers may note seeming omissions in the analytical structure and content of the report; for instance, abuse and neglect might not receive equal treatment or discussion. In such cases it will be useful to bear in mind that the report only reflects the content of the tribal codes collected for the report, and that many of the codes themselves do not address abuse and neglect equally.

Limitations of Database

It should be noted at the outset that Indian tribal codes are difficult to locate. Extensive investigation has uncovered no complete collection of tribal codes. Nor does there appear to be any mechanism for the systematic collecting, updating, and publishing of current codes. Verification of codes by Indian tribes is a similarly difficult process. Consequently, the information base for this section is incomplete and parts of it may be no longer current.

Because locating codes for all the tribes with codes and ascertaining the existence of codes for all the relevant subject matter areas was not possible and because the codes were written over what appears to be roughly a 50-year period, comparisons attempted in this report were difficult to make and may be misstatements of the real status of these codes. Tables 1-17 in the appendix will provide the reader with specific information regarding the portions of Indian codes that were located and included in the database for this paper.

Child Abuse and Neglect -- Criminal Treatment

Indian tribal courts, like state courts, conduct both criminal and civil proceedings to deal with child abuse and neglect. Criminal provisions of tribal codes punish specific acts traditionally defined as child abuse or neglect. While only five of the 51 tribal codes reviewed have criminal child abuse provisions and six have criminal child neglect provisions, 49 tribes punish specific acts against children that fall within the traditional definitions of child abuse and neglect. These acts may be classified into 16 groups based upon the nature of the act and its severity.

The most frequently proscribed act, subject to criminal sanctions by 47 tribes, is failure by a responsible adult person to support his or her dependent children. Forty-five tribes punish parents who fail to send children to school in accordance with compulsory education laws, and 35 tribes punish contributing to the delinquency of a minor.

Other conduct frequently punished as criminal acts is summarized in Appendix B,Table 2, and includes desertion (10 of 51 codes), encouraging a minor to violate curfew ordinances (12 of 51), child molesting (7 of 51), sexual assault of a child (6 of 51), taking indecent liberties with a minor (4 of 51), and endangerng the welfare of a minor (3 of 51). Other tribes punish furnishing tobacco to

minors (1 of 51), incest (1 of 51), condoning the inhalation of gasoline by a minor (1 of 51), and bastardy (5 of 51). In other tribes, general laws, which do not differentiate between minors and adults, serve to protect children from their parents. Acts prohibited by these laws include assault and battery (3 of 51), criminal negligence (1 of 51), and abduction (2 of 51).

The sanctions imposed by the codes range from fines to imprisonment and vary based upon the nature and severity of the criminal act. Since these statutes provide for punishment of specific acts rather than for the child's welfare and interests, tribes have enacted civil laws to cover the latter.

Child Abuse and Neglect -- Civil Treatment

Civil tribal code provisions aim to protect the child, improve his home environment, and in extreme cases, remove the child from the custody of his parent or parents temporarily or, in irremediable situations, permanently. The focus of a civil child abuse or neglect proceeding under Indian tribal codes that provide for such proceedings is on the child and his welfare and interests. The proceedings generally take the form of either temporary care and custody (foster care) or termination of parental rights (TPR) actions. A foster care proceeding is a tribe's initial response to alleged child neglect. Usually, the procedures governing this type of action are found in the tribe's Juvenile Code or Children's Code. Like their state law counterparts, these codes combine treatment of neglected children and juvenile delinquents, and often, like the states, they provide less careful and thorough treatment to neglect proceedings. The more recent codes, such as those of the Zuni, Papago, and Muckleshoot, appear to devote more attention to child neglect proceedings than did their predecessors.

The purpose of TPR proceedings is to deal with irremediable cases of neglect and abuse. Since TPR actions can be voluntary as well as involuntary, the procedures governing these actions are usually found in a tribe's domestic relations, or family, code.

Regardless of the type of civil proceeding, its general purpose is to protect the child and provide him with a healthy environment in which he can develop fully. The means of carrying out this purpose, however, can vary widely. Some tribes, in an effort to provide guidance to the courts, enact specific purpose clauses to furnish the court with goals to consider in reaching their decisions.

Purposes of such proceedings as described in the database for this report are summarized in Appendix B, Table 3. They can vary from actions directed toward strengthening and preserving family home life to those aimed at protecting the child's rights. The most commonly stated purposes are to preserve and strengthen the family, to provide the child with the proper care and environment, to protect the child from physical and psychological harm, and to preserve the child's identity as an Indian.

Frequently, a tribe will define several specific goals to be sought in these proceedings. For example, the Zuni Indian Juvenile Code purpose and construction clause states:

> It is the purpose of this Juvenile Code to secure for each child coming before the Tribal Court such care, guidance, and control, preferably in his own home, as will serve his welfare and the best interests of the Tribe, the State of New Mexico, and the United States; to preserve and strengthen family ties whenever possible; to preserve and strengthen the child's cultural and ethnic identity wherever possible; to secure for any child removed from his home the care, guidance, and control as nearly equivalent as that which he should have been given by his parents to help him develop into a responsible, well adjusted adult; to improve any conditions or home environment which may be contributing to his delinquency . . . To this end, this Code shall be liberally construed.[53]

Occasionally, a code will have only one specific purpose, such as to preserve and strengthen the family, as is the case with the Blackfeet.[54]

Temporary Care and Custody

One of the first determinations to be made in this type of proceeding is how to define a neglected child. As might be expected, definitions vary

widely. A summary of the terms used to define neglect may be found in Appendix B, Table 4. There are, however, two grounds of child neglect upon which a consensus essentially has been reached: abandonment of a child (25 of 51 codes) and failure to provide necessary and proper care or proper parental care to a child (25 of 51 codes). Necessary and proper care generally means the provision, in adequate amounts, of food, medical attention, clothing, hygiene, living quarters, and, in many cases, education.

About 17 of the 51 tribal codes in the database define as neglected a child who does not receive from his parents, or whose parents do not initiate, special care made necessary because of the child's unique medical or psychological problems. Children engaged in a dangerous occupation (16 of 51 codes) or who have parents who refuse (17 of 51 codes) or are unable to provide care for them also are defined frequently by tribes as neglected.

A child is defined in 24 of the 51 tribal codes in the database as a person under the age of eighteen. One exception to that rule is found in the code of the Oglala Sioux, who place the age limit at twenty-one.

Thus, among the tribal codes including such a feature, a typical neglected child provision usually reads like the Jicarilla Apache code provision which follows:

> *Neglected Child.* Shall mean any Indian child under the age of eighteen who:
>
> 1. Is abandoned by his parents, guardian or custodian; or
>
> 2. Who lacks proper parental care by reason of the fault or habits of his parent, guardian or custodian; or
>
> 3. Whose parent, guardian, or custodian neglects or refuses to provide proper and necessary subsistence, education or other care necessary for health, morals or well being of such child; or
>
> 4. Whose parent, guardian, or custodian neglects or refuses to provide special care made necessary by the mental or physical condition of the child; or
>
> 5. Who engages in an occupation or is in a situation dangerous to life or limb or injurious to the health or morals of such child.[55]

Some of the older codes, however, contain additional grounds for neglect which might be considered by today's standards as vulnerable to challenge on constitutional gounds. The Dependent, Neglected or Delinquent Children Code of the Oglala Sioux provides a good example:

> For the purpose of this code the phrase "dependent child" or "neglected child" shall mean any child who is a tribal charge, or any orphan; any child deserted by both its parents, which orphan or deserted child has no suitable home or abode; any child or any infirm, indigent, or incompetent person; any child of any person who is supported in whole or in part by public charity; any child having no suitable home or abode, or who has not proper parental care or guardianship, or who has a home, which, by reason of neglect, cruelty, or depravity on the part of its parents, guardian, or any person in whose care it may be, is an unfit place for such child; any child having vicious, corrupt, or immoral parents or who is in the custody of vicious, corrupt or immoral people, or who is surrounded by vicious, corrupt, or immoral influences; any child whose father, mother, or guardian is a habitual drunkard or a person of notorious or scandalous conduct or a reputed thief or prostitute or habitual idler, or who habitually permits it to frequent places for the purpose of begging or securing alms, or to frequent the company or consort with reputed thieves or prostitutes with or without such mother, father, or guardian, or who by any other act, example or by vicious training depraves the morals of such child; any child employed to lead blind persons in the streets or highways for the purpose of begging; any child playing any instrument of music or singing in public or other places where liquor is sold or served, or on the streets

or public highways; any child of any person confined in any penal or charitable institution; or any child in the possession of any person not the parent or lawful guardian thereof or next of kin to such child.[56]

In response to the passage by Congress of the ICWA, many tribes have enacted Children's Codes or have amended their existing codes. Some of the new codes rival state laws in their innovation and sophistication and include in their definitions of neglect such acts as sexual abuse, physical abuse, and emotional abuse. The Muckleshoot's code provides an excellent example of a modern Indian code:

"Youth-In-Need-Of-Care":

A minor (i.e. under age 18) who:

a. has no parent or custodian available and willing to care for him; or
b. has suffered or is certainly likely to suffer a physical injury inflicted upon him by other than accidental means, which causes or creates a substantial risk of death, disfigurement or impairment of bodily functions; or
c. has not been provided with adequate food, clothing, shelter, medical or mental health care, education or supervision by his parent or custodian necessary for his health or well-being; or
d. has been sexually abused; or
e. has been committing delinquent acts as a result of parental pressures, guidance or approval; or
f. has been suffering emotional abuse committed by his or her parents, custodian or other person living in the youth's home, including but not limited to emotional abuse through the use of abusive or profane language, or derogatory remarks on the cultural heritage of the youth or his parents, or repeated false accusations, to the extent that the youth is manifesting a behavioral problem(s).[57]

1. *Initiation of Proceedings*

A temporary care and custody preceeding is usually initiated by a complaint of some sort. It may be as informal as a phone call from some concerned citizen who has witnessed a particular act or ongoing behavior pattern, or it may be as formal as a police officer preparing and filing a petition with the court.

At the pre-filing stage, the procedures followed are so diverse that it is impossible to discuss them in detail within the confines of this report. Usually formal action is commenced by filing a petition with the court. Generally, the petition must provide the name, age, and residence of the child; the name or description of the adult legally responsible for the care of the child; the condition, physical and mental, of the child; and the alleged grounds of neglect, or abuse, including any specific actions known to the person filing the petition.

The petition in older systems may be simply the initial report of abuse or neglect. Increasingly, however, the petition is becoming a document based on an initial report which was subsequently thoroughly investigated by trained personnel and, in the most modern systems, one that has been examined, usually by a judicial officer, for probable cause.

Usually tribes permit any adult with knowledge of the abuse or neglect to file a petition. A summary of the reporting role is found in Appendix B, Table 5. Some require that the petition be filed on behalf of the tribe and in the child's best interests. Other tribes permit only certain classes of people, such as police officers (5 of 51 codes) and social workers, to file petitions while anyone may make the initial report. In some instances, certain classes of people, such as police officers, are required to file the petition. In most tribes, a parent may voluntarily file a petition.

2. *Emergency Removal*

In an emergency situation, many tribes allow a child to be removed immediately. An emergency situation is ordinarily defined as one where the child is reasonably believed to be in immediate danger from his surroundings and must be removed for his or her protection. Such a removal is

temporary and must be followed by a hearing, which must be held within 24 hours of the removal. In the interim the child is placed in shelter care. The police or the social service agency must make conscientious and continuing efforts to contact the person legally responsible for the care of the child and notify him of the removal of the child and the pending allegations of neglect or abuse.

Usually, an emergency removal may only be had on a court order. A summary of emergency removal powers in the 51 codes in the database is found in Appendix B, Table 6. Under certain circumstances, however, most tribes allow removal by the police: "No child may be taken into immediate custody except... by a Red Lake Reservation Peace Officer... when a child is found in surroundings or conditions which endanger the child's health or welfare or which such peace officer reasonably believes will endanger such child's health or welfare."[58] In one extraordinary example, the Navajo allow removal by any adult who sees a child in need of immediate care or medical attention: "a private citizen may take a child into custody if he has reason to believe that the child requires immediate care or medical attention."[59]

3. *Prehearing Procedures*

Most codes encourage the courts to cooperate fully with federal, state, tribal, public, and private agencies involved in the protection of children from neglectful or abusive practices.

To this end, many tribes allow their courts to require a social study to be performed by a competent agency prior to the adjudicatory hearing. The reports generally detail family relationships, behavior, and living conditions, and are usually considered by the court along with the rest of the evidence in reaching a determination on the merits of the case. A summary of the occurrence of such studies is found in Appendix B, Table 7.

In most cases, the court is also empowered to order medical examinations and psychiatric evaluations of the child. The resulting reports may be used by any party as part of his or her case and usually become part of the court record automatically. Some tribes also permit their courts to order parents or guardians to submit to medical examinations and psychiatric testing. The results of the testing are then filed with the court. As is the case with reports concerning the child, any party may use the results of the parent's tests at the hearing. A summary of such examination procedures may be found in Appendix B, Table 8.

4. *Hearing Procedures*

Most tribes specify that child abuse or neglect trials or hearings are to be judicial. A summary of the nature of such hearings may be found in Appendix B, Table 9. A few codes do not so specify, leaving open the possibility that a jury trial could be obtained upon proper request. In light of the other provisions governing the conduct of hearings, however, it appears unlikely that a court would permit a jury trial in a child abuse or neglect proceeding.

The manner in which a child neglect hearing is conducted by a tribal court sometimes is very similar to procedures in their state counterparts. For the most part, the hearings are closed to the general public.

> Hearings in children's cases shall be before the Court without a jury and may be conducted in an informal manner. The general public shall be excluded and only such persons admitted as the Judge finds have a direct and legitimate interest in the case or in the work of the Court. The child or one of his parents may be separately interviewed at any time at the discretion of the Court. The hearing may be continued from time to time, at a date specified in the Order of the Court.[60]

While rules of evidence are in force, hearings tend to be informal, with many conducted in the judge's chambers instead of the courtroom.

Despite this apparent informality, the tribes through their codes recognize the importance of and grant to the parties most of the basic rights traditionally associated with adversary proceedings. All tribes recognize both the parent's and the child's right to be represented at all stages of the proceedings. Many tribes extend these rights of representation and intervention to all parties, in-

cluding the tribe itself, the primary social agency inolved in the case, and any other interested person. A summary of rights of parties at such hearings may be found in Appendix B, Table 10.

Although the right to be represented by counsel generally does not include the right to appointed counsel, the more recent tribal codes are beginning to recognize the child's, and in some cases even the parent's, right to appointed counsel. Generally, the court is given discretionary power to appoint counsel, but a few tribes have made such appointment mandatory.

In addition to the right to counsel, all parties usually have the right to introduce evidence and present a case. Parties also have the right to examine all witnesses testifying at the proceeding and to take the stand on their own behalf. At least one tribe recognizes the parents' and the child's right to appeal from an adverse ruling/disposition and to examine all documents and reports before the court.[61]

Like state laws, tribal codes may also provide for the appointment of a guardian *ad litem* (GAL) to represent the child's interests. The court usually may exercise its discretion to appoint a GAL when it deems such appointment appropriate, but there are certain circumstances which mandate court appointment of a GAL. The court must appoint a GAL when (1) the child does not have a parent or guardian to represent him or (2) the parent's and the child's interests conflict, thereby providing no effective representation of the child's interest through either the parent or the parent's attorney. A summary of the occurrence of GAL appointment in the tribal codes collected for the database of this report may be found in Appendix B, Table 11.

At the conclusion of the hearing, the court must enter a disposition. If the court finds that the allegations of neglect were not legally proven, the case is dismissed, and there is no further interference in the family unit by the tribe or its agencies. If the court finds that the allegations of neglect set forth in the petition have been proven, the child may be removed from the care of his parent or guardian and placed in the temporary care and custody of the tribe, or placed in the custody of his parent or guardian under the supervision of the court. The burden of proof standard which must be met varies from tribe to tribe, but the most common standards encountered are those of clear and convincing evidence and a preponderance of the evidence.

5. ***Placement***

If a child is removed from his parent, the court must then decide where to place the child. As was stated in the discussion of the ICWA, tribal placement preferences may alter those stated in the Act, provided they require placement in the least restrictive setting and have been approved by the appropriate governing body. Thus, in making a placement decision, the court must consider the child's welfare, the child's religion, and the child's family and tribal customs. The Muckleshoot Code summarizes this point by requiring that, "whenever possible, the youth should be placed in a setting which offers customs, habits and religious background similar to those found in the youth's home."[62] The court generally is given broad discretion in placing a child as long as the placement is the least restrictive available.

In some circumstances, the child's family is given preference in placement. This preference can result in returning the child to his home under the protective supervision of the court and such other conditions as the court may deem appropriate, or it may mean placing the child with a member of his extended family. Foster homes are often considered the next most desirable placement. Preference is generally given first to foster families in the child's tribe, then to Indian foster families of other tribes, and finally to any foster home.[63] Other options available to the court in placing the child usually include shelter care facilities and boarding schools. The Papago Tribe Children's Code states:

> The Court shall give precedence to dispositions in the following sequence:
>
> 1. Dismiss the petition;
> 2. Refer the child and the child's parent or guardian to a Tribal agency for needed assistance and dismiss the petition;
> 3. Order terms of supervision calculated to assist the child and the child's parent or guardian, which prescribe the manner of supervision and care

of the child and which are within the ability of the parent or guardian to perform;

4. Order the Children's Court Counselor to assist the child and to assist the child's parent or guardian to secure social and medical services to provide proper supervision and care of the child;
5. Upon a finding that a parent or guardian is not willing to take custody of the child, that a child is not willing to reside in the custody of the child's parent or guardian, or that a parent or guardian cannot provide necessary supervision and care of the child, the Court may place the child in shelter care. The Court shall give precedence to shelter care placements in the following sequence: relative; a foster family; a group boarding home; a child caring institution. The Court shall make a shelter care placement in the child's community when possible.
6. Order the initiation of proceedings to terminate parental rights as outlined in Chapter III of this Code.[64]

If the child is not placed in his parent's custody, the Court may require the parent to rectify the conditions that formed the basis for the petition. When the parent fulfills the requirements of the order, the Court shall return the child to the parent's custody. A summary of factors affecting placement is found in Appendix B, Table 12, and commitment choices are summarized in Appendix B, Table 13.

Surprisingly, tribal courts are not limited to placing a child on the reservation. Under certain conditions, most tribes permit a child to be removed from the reservation. Once again, the court is given broad discretion in this area. The court may set whatever conditions it considers necessary, and may, for example, direct that a bond be posted. Usually, however, the only condition imposed is that the placement recipient agree, sometimes in writing, to return the child to the reservation whenever the court requests. In a few cases, the consent of the tribal council and/or the tribal welfare commission must be obtained in order to allow a child to be removed from the reservation. A summary describing removal of a child from a reservation is found in Appendix B, Table 14.

The tribal courts, like their state counterparts, have continuing jurisdiction over a child until either the court dismisses the petition or the child attains the age of majority. That jurisdiction obligates most courts to review regularly the child's status and progress. Reviews may be periodic but usually are required every 3-6 months. The review hearing can be *ex parte* (with one or more parties absent) but it is more likely to be conducted as a full hearing with all parties present. Most tribes require the person with whom the child is placed to submit a report to the court detailing the child's progress since the last hearing. In some cases the court may be required to conduct its own investigation into the child's progress since the last hearing. A summary of frequency of reviews is found in Appendix B, Table 15.

It appears from the codes in the database that a child may be held in foster care status indefinitely. Most tribes, however, as illustrated in the quote from the Papago Children's Code above, allow for a termination of foster care status by terminating the natural parents' right to custody of the child in cases of extreme, prolonged, or irremediable abuse or neglect in a termination of parental rights proceeding.

Termination of Parental Rights

The purpose of a termination of parental rights (TPR) proceeding is to extinguish all the rights of a present parent, whether natural or adoptive, to his child so that the child will be legally "free" to be adopted. The effect of a TPR order is to cut off all ties between parent and child. Orders terminate rights of both the parent and child in one another, such as the right to inherit through or from one another, and relieves both parties of any further legal obligations to the other party. A TPR order leaves the parent and child legal strangers.

TPR actions can be voluntary or involuntary. A voluntary action is one which the parent files to extinguish his own rights to the child. Such a proceeding is not within the scope of this report. Neither is the involuntary action where one parent files a petition to extinguish the parental rights of the second parent, unless the grounds alleged are ones which could be brought by any other person

allowed to petition the court for TPR. A summary describing who may file to begin TPR proceedings may be found in Appendix B, Table 16.

The involuntary TPR actions discussed in this section usually are brought in response to prolonged, repeated, or irremediable neglect or abuse. Some tribes allow anyone with a "legitimate interest" to bring the action. A legitimate interest is generally defined as any emotional tie to or right in the child. Usually, however, the action must be filed by the child's guardian or by the appropriate social service agency. As noted previously, one parent may petition to terminate the other parent's rights to the child. In rare instances, the child may institute a TPR action on his or her own behalf, usually through his or her GAL or attorney.

Under the terms of the tribal codes reviewed for this report, and in contrast to the ICWA, in order to terminate the rights of parents in an Indian child, the party initiating the action must prove its case either beyond a reasonable doubt or by clear and convincing evidence. These burdens of proof are greater and more difficult to meet than the standards of proof that must be met in foster care proceedings, except under the ICWA. This difference exists because the Indian tribes included in the database universally recognize the parent's preferred right to custody of his child.

Grounds upon which the court may grant a TPR order fall into three groups: (1) abandonment; (2) irremediable neglect situations where the parent is unfit or unable to perform his parental duties; and (3) willful neglect situations where the parent refuses to provide the child with appropriate care. On the whole, TPR grounds are the same as the grounds in foster care proceedings, except that in TPR proceedings the conduct questioned is usually more extreme or spans a prolonged time period. The grounds for termination found in the codes collected for the database are summarized in Appendix B, Table 17.

Tribal codes generally define an abandoned child as one who has been deserted by his parents and whose parent neither provides for his support nor attempts to maintain the parent-child relationship through contact or communication of any kind. Most tribal codes have created a "rebuttable presumption" that, if there has been no communication between the parent and child for a specified time, usually ranging from six months to two years, the child is presumed to be abandoned. For example, the Salt River Pima Maricopa Indian Code provision relating to grounds on which TPR may be granted states:

> That the parent has abandoned the child or that the parent has made no effort to maintain a parental relationship with the child. It shall be presumed the parent intends to abandon the child if a child has been left without any provision for his support and without any communications from such parent for a period of six (6) months or longer. If, in the opinion of the Court, the evidence indicates that such parent has made only token efforts to support or communicate with the child, the courts may declare the child abandoned by such parent.[65]

The category of irremediable or extreme neglect, in which the parent is unfit or unable to provide the child with proper care, encompasses several diverse grounds, including a parent's mental illness, sexual abuse of the child, alcoholism, drug addiction, or the parent's inability to improve himself and/or the home environment during a court-supervised trial period. The Burns-Paiute Code illustrates this point:

> The rights of the parent or parents may be terminated as provided in subsection (10) of this section if the court finds that the parent or parents are unfit by reason of conduct or condition seriously detrimental to the child and integration of the child into the home of the parent or guardian is improbable in the foreseeable future due to conduct or conditions not likely to change; in determining such conduct and conditions, the court shall consider but is not limited to the following:
>
> (a) Emotional illness, mental illness, or mental deficiency of the parent of such duration as to render it impossible to care for the child for extended periods of time.
>
> (b) Conduct toward any child of an abusive, cruel or sexual nature.
>
> (c) Physical neglect of the child.[66]

The Salt River Pima Maricopa Code also includes:

> the parent [who] is deprived of his civil liberties due to the conviction of a felony if the felony of which such parent was convicted is of such nature as to prove the unfitness of such parent to have future custody and control of the child, or if the sentence of such parent is of such length that the child would be deprived of a normal home for a period of years.[67]

In this same category, the Red Lake Band of the Chippewa defines as unfit any parent who engages in repeated lewd and lascivious behavior, debauchery, or who is addicted to or habitually uses narcotic drugs.[68]

The last category of TPR grounds encompasses those situations where the parent, while able, refuses to provide the child with proper care or engages in willful acts of abuse, particularly sexual abuse. The Salt River Pima Maricopa and the Zuni Codes include in this category situations where "after a period of trial, during which the child was kept in his own home under protective supervision or probation, or during which the child was returned to live in his own house, the parent substantially and continuously or repeatedly refused or failed to give the child proper parental care and protection."[69] The Shoshone and Bannock code describes this situation as one in which parents "being financially able to have neglected to give such child parental care and protection."[70]

A TPR order immediately extinguishes all the rights and obligations of the parent and the child to one another, and renders the child legally free to be adopted. The court usually supervises the subsequent adoption proceedings and placement. The factors and considerations imposed upon the court in making foster care placements also apply in the selection of permanent placements. Some tribes who allow a child to be placed in an off-reservation foster home, however, will not permit the child to be adopted into an off-reservation home. Once the adoption has been consummated, the court has discharged its duty completely, and, at least with respect to the TPR action, plays no further role in the child's welfare.

VI. THE ROLE OF CFR COURTS IN CHILD ABUSE AND NEGLECT

Subchapter B of Part 11 of Title 25 of the Code of Federal Regulations creates Courts of Indian Offenses to administer justice in those Indian reservations where neither traditional (oral) Indian law systems nor tribal code or state courts operate. Courts operating under Title 25 are not permitted where state courts are doing an effective job,[71] and tribes may displace CFR courts by adopting a tribal code and having it approved by the Secretary of the Interior.[72]

The domestic relations portion of Subchapter B discusses marriage, divorce, adoption, paternity determinations, child support, wills, and rules of inheritance.[73] No reference is made to children or to the role of the family in assuring their welfare.

In the portion of Subchapter B entitled "Code of Indian Tribal Offenses," 61 offenses are described, and the punishment for each is detailed. The enumerated offenses reflect the needs and circumstances of life on Indian reservations and are oriented toward the preservation of order among people who deal frequently with livestock.[74]

The portion of the list of offenses having possible value for cases of child abuse or neglect contains statements of several common law offenses. Such offenses have equal applicability to adults and children as victims, and use of these sections could provide a basis for prosecution of complaints of child abuse or neglect. For example, sections 11.38 and 11.39 deal with assault and battery, respectively. A parent or other responsible adult guilty of physical abuse, as it is defined by state codes and some tribal codes, seemingly could be prosecuted for the same acts under those sections of Subchapter B criminalizing assault and assault and battery.

Section 11.49 prohibits disorderly conduct and includes fighting in a public place. An act by a parent or responsible adult against a child in public could be prosecuted under this section. Section 11.60C's prohibition of fornication could be used to prosecute cases that receive special treatment elsewhere under the heading of sexual abuse of children, as could sections 11.63 and 11.63C, which make it a crime to infect another person with a venereal disease.

The issue of child neglect, though not the subject of *per se* treatment in Subchapter B, does receive more nearly direct treatment than child abuse. Sections 11.64 and 11.64C provide sentences of three months at labor for any Indian who for any reason refuses or neglects to furnish to his dependents food, shelter, or other necessities. These sections reflect an intentional commitment to protect Indian children from the lack of the necessities of life, which is a basic form of neglect. Section 11.65 continues the concern of Subchapter B for the welfare of children by criminalizing neglect or refusal to send one's children or any under one's care to school. Here the notion of responsibility extends beyond the child's biological caretakers and includes responsible supervisory adults. Thus this section reflects the Child Abuse Prevention and Treatment Act's concern with the acts of people other than biological parents.[75]

A further, less direct approach to controlling child neglect may be found in the language of section 11.66 of Subchapter B. Section 11.66 deals with the consequences of neglect by criminalizing the acts of anyone who willfully contributes to the delinquency of a minor. Though the requirement of willfullness may make the task more difficult, prosecution for child neglect could conceivably be approached through this provision.

No other common law offenses with conceivable applicability to instances of child abuse or neglect are included in Subchapter B or in Title 25. No other more specific, support-related crimes that are treated elsewhere as child neglect are included in Title 25.

VII. CONCLUSION

As this initial review of American Indian law relating to child abuse and neglect indicates, the subject is quite complex. This report discusses some of the factors involved in the relationship of Indian tribal codes to child abuse and neglect jurisdictional questions, the effect of the Indian Child Welfare Act, the types of tribal justice systems, and provisions of various tribal codes. It is hoped that this review will stimulate feedback, so that information on this developing area of the law will become more readily available to the public and to parties with a special interest in the field.

NOTES

1. Noxon Chemical Products Co. v. Leckie, 39 F.2d 318, 320.
2. Black's Law Dictionary 1568 (4th ed. 1968).
3. Black's Law Dictionary 1569 (4th ed. 1968).
4. 18 U.S.C. § 1158 (1970).
5. 18 U.S.C. § 1162 (1970).
6. National American Indian Court Judges Association, *Justice and the American Indian*, vol. 2, p. 86 (1976).
7. *Ibid.*
8. 18 U.S.C. § 1162 (1970); 28 U.S.C. §1360 (1970).
9. Act of August 15, 1953, Pub. L. No. 83-280, § 6, 67 Stat. 588.
10. Act of August 15, 1953, Pub. L. No. 83-280, § 7, 67 Stat. 588.
11. Act of June 18, 1934, 48 Stat. 984.
12. The Indian Child Welfare Act, Pub. L. No. 95-608, 92 Stat. 3069.
13. The Indian Child Welfare Act, Pub. L. No. 95-608, § 2 (4), 92 Stat. 3069.
14. *Ibid.*, § 2 (5).
15. *Ibid.*, § 3.
16. *Ibid.*, § 4 (4).
17. *Ibid.*, § 111.
18. *Ibid.*, § 101 (d).
19. *Ibid.*, § 112.
20. *Ibid.*, § 113.
21. For example, the ICWA requires the dismissal of any proceeding brought in state court where the petitioner has improperly removed the Indian child or has improperly retained custody of such child after a visit or expired temporary foster care period. The act further requires the state court to return the Indian child to his parent unless the court finds to do so would subject the child to substantial and immediate danger or threat of such danger. *Ibid.*, § 110.
22. *Ibid.*, § 101(a).
23. *Ibid.*, § 101(b).
24. However, the Bureau of Indian Affairs issued final guidelines for state courts handling Indian child custody proceedings on November 16, 1979; the guidelines were published at 44 Fed. Reg. 67,584 (1979). The criteria for determinations of good cause not to transfer to a tribal court are at 44 Fed. Reg. 67,591.
25. The Indian Child Welfare Act, Pub. L. No. 95-608, 92 Stat. 3069, § 101(b).
26. *Ibid.*, § 108(a).
27. *Ibid.*, § 108(b)(1).
28. *Ibid.*, § 108(b)(2).
29. *Ibid.*, § 108(c).
30. *Ibid.*, § 108(d).
31. *Ibid.*, § 109.
32. The ICWA defines "Indian Custodian" as "any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child." *Ibid.*, § 4 (b).
33. *Ibid.*, § 101(c).

34. *Ibid.*, § 102(c).

35. *Ibid.*, § 102(a).

36. *Ibid.*

37. *Ibid.*, § 102(b).

38. *Ibid.*, § 102(e).

39. *Ibid.*, § 102(f).

40. *Ibid.*, § 103(a).

41. *Ibid.*, § 103(b).

42. *Ibid.*, § 103(c), (d).

43. *Ibid.*, § 104.

44. *Ibid.*, § 105(a).

45. *Ibid.*, § 105(b).

46. *Ibid.*, § 105(c).

47. *Ibid.*, § 105(d), (e).

48. *Ibid.*, § 301.

49. *Ibid.*, § 107.

50. Act of June 18, 1934, 48 Stat. 984.

51. Senate Report 1080, 73d Cong., 2d Sess. (May 10, 1934).

52. 25 U.S.C. § 1301 et seq. (1970).

53. Zuni, Indian Juvenile Code, § 9-1-1.

54. Blackfeet, Law and Order Code, Ch. 3, § 6A.

55. Jicarilla, Tribal Code, Ch. VII, § 1 (d).

56. Oglala Sioux, Revised Code, Ch. 3A, § 54.18.

57. Muckleshoot, Code, Title XII, § 1 (13).

58. Red Lake Band of Chippewas, Juvenile Court Code, § XVI (1)(c)(2).

59. Navajo, Tribal Code, Ch. 11.

60. Zuni, Indian Juvenile Code, § 9-11-4.

61. Salt River Pima-Maricopa, Juvenile Code.

62. Muckleshoot, Code, § 3(9).

63. The Indian Child Welfare Act, Pub. L. No. 95-608, 92 Stat. 3069, § 105.

64. Papago, Children's Code, § 19.

65. Navajo, Tribal Code, Ch. 11.

66. Burns Paiute, Code, § 419.523.

67. Salt River Pima-Maricopa, Juvenile Code.

68. Red Lake Band of Chippewas, Juvenile Court Code, § XXV.

69. Zuni, Indian Juvenile Code, § 9-15-3.

70. Shoshone-Bannock, Law and Order Code, Ch. 6, § 6.10 (2).

71. 25 C.F.R. Chap. 1, § 11.1(c).

72. *Ibid.*, § 11.1(e).

73. *Ibid.*, §§ 11.27-11.32C

74. *Ibid.*, §§ 11.76H-11.86H, 11.90ME.

75. 42 U.S.C. § 5101 (1974).

APPENDIX A

COURT SYSTEMS

The following lists categorize the various Indian tribes according to which of the three court systems--tribal, traditional, or Code of Federal Regulations--each uses. The distinctions between the three systems are discussed in section IV of this report.

Tribal Courts

Note: The following tribal or reservation groups operate judicial systems under tribal codes.

Acoma Pueblo (New Mexico)
Ak Chin Papago (Ak Chin Reservation, Arizona)
Bad River Band of Lake Superior Chippewa Indians (Bad River Reservation, Wisconsin)
Blackfeet (Blackfeet Reservation, Montana)
Chemehuevi and Mojave (Chemehuevi Reservation, California)
Cheyenne River Sioux (Cheyenne River Reservation, South Dakota)
Chippewa Cree (Rocky Boy's Reservation, Montana)
Chitimacha (Chitimacha Reservation, Louisiana)
Cocopah (Cocopah Reservation, Arizona)
Coeur d'Alene (Coeur d'Alene Reservation, Idaho)
Colorado River Tribe (Colorado River Reservation, Arizona)
Confederated Salish-Kootenai Tribes (Flathead Reservation, Montana)
Confederated Tribes of the Colville Reservation (Colville Reservation, Washington)
Confederated Tribes of Warm Springs (Warm Springs Reservation, Oregon)
Crow (Crow Reservation, Montana)
Crow Creek Sioux (Crow Creek Reservation, South Dakota)
Devil's Lake Sioux (Devil's Lake Reservation, North Dakota)
Duck Valley Shoshone-Paiute (Duck Valley Reservation, Nevada)
Fort Peck Assiniboine-Sioux Tribes (Fort Peck Reservation, Montana)
Fort McDermitt Paiute and Shoshone Tribes (Fort McDermitt Reservation, Nevada)
Gros Ventres - Assiniboine (Fort Belknap Reservation, Montana)
Havasupai (Havasupai Reservation, Arizona)
Hopi (Hopi Reservation, Arizona)
Hualapai (Hualapai Reservation, Arizona)
Isleta Pueblo (New Mexico)
Jicarilla Apache (Jicarilla Reservation, New Mexico)
Kalispel (Kalispel Reservation, Washington)
Keweenaw Bay Indian Community, L'Anse, Lac Vieux Desert and Ontonagon Bands of Chippewa (L'Anse Reservation, Michigan)
Laguna Pueblo (New Mexico)
Lake Superior Chippewa Band of Indians (Lac Courte Oreilles Reservation, Wisconsin)
Lower Brule Sioux (Lower Brule Reservation, South Dakota)
Lummi (Lummi Reservation, Washington)
Makah (Makah Reservation, Washington)
Mescalero Apache (Mescalero Reservation, New Mexico)
Metlakatla (Tsimshian) (Annette Island Reserve, Alaska)
Mississippi Band of Choctaw (Choctaw Reservation, Mississippi)
Mojave (Fort Mojave Reservation, California)
Muckleshoot Tribe (Muckleshoot Reservation, Washington)
Nambe Pueblo (New Mexico)
Navajo (Arizona, New Mexico, Utah)
Northern Cheyenne (Northern Cheyenne Reservation, Montana)

Oglala Sioux (Pine Ridge Reservation, South Dakota)
Paiute (Burns Paiute Reservation, Oregon)
Papago (Papago Reservation, Arizona)
Pima - Maricopa (Gila River Reservation, Arizona)
Pima - Maricopa (Salt River Reservation, Arizona)
Port Gamble Band of Klallam Indians (Port Gamble Reservation, Washington)
Puyallup (Puyallup Reservation, Washington)
Pyramid Lake Paiute (Pyramid Lake Reservation, Nevada)
Quechan Tribe (Fort Yuma Reservation, California)
Quinalt (Quinalt Reservation, Washington)
Red Lake Band of Chippewa Indians (Red Lake Reservation, Minnesota)
Rosebud Sioux (Rosebud Reservation, South Dakota)
San Carlos Apache (San Carlos Apache Reservation, Arizona)
San Ildefonso Pueblo (New Mexico)
San Juan Pueblo (New Mexico)
Shoshone and Bannock (Fort Hall Reservation, Idaho)
Sisseton Wahpeton Sioux (Lake Traverse Reservation, South Dakota)
Skokomish (Skokomish Reservation, Washington)
Snohomish (Tulalip Indian Reservation, Washington)
Southern Ute (Southern Ute Reservation, Colorado)
Spokane (Spokane Reservation, Washington)
Standing Rock Sioux (Standing Rock Reservation, North Dakota)
Sugar Island - Bay Mills Chippewa Indian Community (Bay Mills Reservation, Michigan)
Suquamish (Port Madison Reservation, Washington)
Swinomish (Swinomish Reservation, Washington)
Three Affiliated Tribes of Fort Berthold (Fort Berthold Reservation, North Dakota)
Turtle Mountain Band of Chippewa (Turtle Mountain Reservation, Montana)
Ute Indian Tribe of Uintah and Ouray (Uintah and Ouray Reservation, Utah)
Ute Mountain (Ute Mountain Reservation, Colorado)
Walker River Tribe (Walker River Reservation, Nevada)
White Mountain Apache (White Mountain Apache Reservation)
Wisconsin Potawatomi of Michigan (Hannahville Indian Community, Michigan)
Yakima Nation (Yakima Reservation, Washington)
Yankton Sioux (Yankton Reservation, South Dakota)
Yavapai - Apache Tribe (Camp Verde Reservation, Arizona)
Yavapai - Apache Tribes (Fort McDowell Reservation, Arizona)
Yavapai - Prescott (Yavapai - Prescott Reservation, Arizona)
Zuni Pueblo (New Mexico)

2-

Traditional Courts

Note: **The judicial systems of the following tribes take the form of spoken traditions and are not written or published.**

Cochiti Pueblo (New Mexico)
Jemez Pueblo (New Mexico)
Picuris Pueblo (New Mexico)
Pojoaque Pueblo (New Mexico)
Sandia Pueblo (New Mexico)
San Felipe Pueblo (New Mexico)
Santa Ana Pueblo (New Mexico)
Santa Clara Pueblo (New Mexico)
Santa Domingo Pueblo (New Mexico)
Taos Pueblo (New Mexico)
Tesuque Pueblo (New Mexico)
Zia Pueblo (New Mexico)

Note: The following tribes use Title 25 of the Code of Federal Regulations as the basis of their judicial systems.

Arapahoe and Shoshone (Wind River Reservation, Wyoming)
Fallon Paiute - Shoshone Tribe (Fallon Colony and Reservation, Nevada)
Goshute Tribe (Goshute Reservation, Utah)
Hopi - Navajo (H[illegible] - Navajo Joint-Use Area, Arizona)
Kaibab Band of the Southern Paiute (Kaibab Reservation, Arizona)
Las Vegas Paiute Tribe (Las Vegas Colony, Nevada)
Lovelock Paiute Tribe (Lovelock Colony, Nevada)
Menominee Tribe of Wisconsin (Menominee Reservation, Wisconsin)
Minnesota Chippewa Tribe - Nett Lake (Bois Forte Reservation, Minnesota)
Moapa Paiute Tribe (Moapa Reservation, Nevada)
Nez Perce (Nez Perce Reservation, Idaho)
Nooksack (Nooksack Reservation)
Omaha (Omaha Reservation, Nebraska)
Saginaw - Chippewa (Isabella Reservation, Michigan)
Shoshone (Duckwater Reservation, Nevada)
Skull Valley Goshute (Skull Valley Reservation, Utah)
Te-Moak Band of Western Shoshone (Battle Mountain Colony, Nevada)
Te-Moak Band of Western Shoshone Indians (South Fork Reservation, Nevada)
Washoe (Washoe Reservation)
Washoe Paiute Tribes (Reno - Sparks Indian Colony, Nevada)
Winnemucca Paiute (Winnemucca Colony, Nevada)
Yerington Paiute (Yerington Reservation, Nevada)
Yomba Shoshone (Yomba Reservation, Nevada)

APPENDIX B

TABULAR SUMMARY OF TRIBAL CODE REVISIONS IN THE DATABASE

Tables 1-17 in this appendix illustrate the content of the 51 tribal codes included in the database. Each table covers a particular issue (e.g., Jurisdiction; Who May Report, etc.) and indicates the tribal codes which cover that issue and the aspects of the issue (e.g., Jurisdiction-Criminal, Civil, Juvenile) covered by each code.

TABLE 1

JURISDICTION UNDER TRIBAL CODES

	Criminal	Civil	Juvenile
Acoma Pueblo	X	X	
Ak Chin		X	
Blackfeet	X		
Cheyenne River Sioux		X	
Chippewa Cree	X		
Coeur d'Alene		X	
Confederated Salish-Kootenai	X	X	
Confederated Tribes of Warm Springs	X	X	X
Crow	X		
Crow Creek Sioux		X	X
Devil's Lake Sioux	X	X	
Duck Valley Paiute and Shoshone		X	
Fort McDermitt Paiute and Shoshone		X	
Fort Peck Assiniboine-Sioux	X	X	
Gros Ventres-Assiniboine		X	X
Hopi	X		
Hualapai		X	X
Isleta Pueblo	X	X	
Jicarilla Apache	X	X	X
Kalispel	X		
Keweenaw Bay	X	X	X
Laguna Pueblo	X	X	
Lower Brule Sioux	X	X	X
Lummi	X	X	
Muckleshoot	X		X
Navajo	X		X
Northern Cheyenne	X		X
Oglala Sioux	X	X	X
Paiute (Burns Paiute Reservation)	X		X
Papago			X
Pima Maricopa (Salt River)	X	X	
Port Gamble Klallam	X		
Pyramid Lake Paiute	X	X	
Red Lake Band of Chippewas			X
Rosebud Sioux		X	X
San Carlos Apache		X	
San Ildefonso Pueblo	X	X	
Shoshone and Bannock	X	X	
Sisseton Wahpeton Sioux			X
Snohomish	X	X	
Southern Ute	X	X	
Spokane		X	
Standing Rock Sioux	X	X	X
Swinomish	X	X	
Three Affiliated Tribes of Ft. Berthold	X	X	X
Turtle Mountain Chippewa		X	X
Walker River Tribe		X	
White Mountain Apache	X	X	X
Yakima	X	X	
Yavapai-Apache	X	X	
Zuni	X	X	X
Totals	35	38	21

TABLE 2

CRIMINALLY PROSCRIBED ACTS

	Failure to Send to School	Failure to Support	Desertion	Child Abuse	Curfew Violation	Contributing to the Delinquency of a Minor	Bastardy	Sexual Assault on Child	Assault and Battery	Child Neglect	Child Molesting	Indecent Liberties	Condoning Inhalation of Gasoline	Endangering Welfare	Incest	Furnishing Tobacco to Minors	Criminal Negligence	Abduction
Acoma Pueblo	X	X			X	X												
Ak Chin	X		X			X					X				X	X		X
Blackfeet	X	X				X												
Cheyenne River Sioux	X	X			X	X		X										
Chippewa Cree	X	X			X	X												
Coeur d'Alene	X	X	X	X		X				X	X							
Confederated Salish-Kootenai	X	X			X	X	X											
Confederated Tribes of Warm Springs	X	X				X		X		X	X	X						
Crow		X																
Crow Creek Sioux	X	X			X	X							X					
Devil's Lake Sioux	X	X				X												
Duck Valley Paiute and Shoshone	X	X				X												
Fort McDermitt Paiute and Shoshone	X	X				X												
Fort Peck Assiniboine-Sioux	X	X																
Gros Ventres-Assiniboine		X			X	X												
Hopi	X	X	X			X		X			X							
Hualapai		X			X	X	X	X	X					X				X
Isleta Pueblo	X	X				X												
Jicarilla Apache	X	X	X			X		X			X							
Kalispel	X	X			X	X												
Keweenaw Bay	X	X										X						
Laguna Pueblo	X	X			X	X												
Lower Brule Sioux	X	X																
Lummi																		
Muckleshoot	X	X	X															
Navajo	X	X		X														
Northern Cheyenne	X	X	X		X													
Oglala Sioux	X	X		X		X												
Paiute (Burns Paiute Reservation)	X	X		X	X	X		X	X	X								
Papago						X					X	X						
Pima Maricopa (Salt River)							X		X									
Port Gamble Klallam																		
Pyramid Lake Paiute	X	X				X												
Red Lake Band of Chippewas	X									X								
Rosebud Sioux	X	X	X							X								
San Carlos Apache	X	X												X				
San Ildefonso Pueblo	X	X			X													
Shoshone and Bannock	X	X	X			X	X											
Sisseton Wahpeton Sioux																		
Snohomish	X	X				X												
Southern Ute	X	X				X												
Spokane	X	X				X	X											
Standing Rock Sioux	X	X	X															
Swinomish	X	X				X												
Three Affiliated Tribes of Ft. Berthold	X	X				X												
Turtle Mountain Chippewa	X	X	X									X						
Walker River Tribe	X	X				X												
White Mountain Apache	X	X				X					X						X	
Yakima	X	X				X												
Yavapai-Apache	X	X				X												
Zuni	X	X		X						X								
Totals	43	44	10	5	12	33	5	6	3	6	7	4	1	2	1	1	1	2

TABLE 3

PURPOSE OF PROCEEDINGS FOR TERMINATION OF PARENTAL RIGHTS

	Preserve and Strengthen Family	Protect Child's Rights	Protect Parent's Rights	Provide Child w/Special Care and Proper Environment	Protect Child	Preserve Child's Indian Identity
Acoma Pueblo						
Ak Chin						
Blackfeet	X					
Cheyenne River Sioux						
Chippewa Cree						
Coeur d'Alene						
Confederated Salish-Kootenai						
Confederated Tribes of Warm Springs						
Crow						
Crow Creek Sioux						
Devil's Lake Sioux						
Duck Valley Paiute and Shoshone						
Fort McDermitt Paiute and Shoshone						
Fort Peck Assiniboine-Sioux						
Gros Ventres-Assiniboine	X			X		
Hopi						
Hualapai						
Isleta Pueblo						
Jicarilla Apache						
Kalispel						
Keweenaw Bay						
Laguna Pueblo						
Lower Brule Sioux						
Lummi						
Muckleshoot	X			X		X
Navajo	X			X	X	X
Northern Cheyenne	X			X	X	X
Oglala Sioux						
Paiute (Burns Paiute Reservation)						
Papago						
Pima Maricopa (Salt River)						
Port Gamble Klallam						
Pyramid Lake Paiute						
Red Lake Band of Chippewas	X			X	X	X
Rosebud Sioux						
San Carlos Apache						
San Ildefonso Pueblo						
Shoshone and Bannock	X	X	X		X	
Sisseton Wahpeton Sioux						
Snohomish						
Southern Ute						
Spokane						
Standing Rock Sioux						
Swinomish						
Three Affiliated Tribes of Ft. Berthold	X			X		
Turtle Mountain Chippewa	X			X	X	X
Walker River Tribe						
White Mountain Apache	X		X		X	
Yakima						
Yavapai-Apache						
Zuni	X			X	X	X
Totals	11	1	2	7	7	6

TABLE 4

DEFINITION OF NEGLECTED CHILD

	Under 18	Abandoned	Not Receiving Proper Care	Not Receiving Special Care	Parent Refuses Care	Dangerous Occupation	Abuse/Mistreatment	Health, Welfare Morals Imperiled	Failure to Discharge Parental Duty	Found in Disreputable Place	Sex Abuse	Crime Because of Parent	Miscellaneous
Acoma Pueblo													
Ak Chin													
Blackfeet	X	X	X					X					
Cheyenne River Sioux	X	X	X		X	X							
Chippewa Cree													
Coeur d'Alene	X	X	X						X				
Confederated Salish-Kootenai													
Confederated Tribes of Warm Springs													
Crow													
Crow Creek Sioux	X	X	X	X	X	X							
Devil's Lake Sioux	X	X	X	X	X	X							
Duck Valley Paiute and Shoshone													
Fort McDermitt Paiute and Shoshone													
Fort Peck Assiniboine-Sioux	X	X	X					X					
Gros Ventres-Assiniboine	X	X	X	X	X	X							
Hopi													
Hualapai	X	X	X	X	X	X	X			X			
Isleta Pueblo													
Jicarilla Apache	X	X	X	X	X	X							
Kalispel													
Keweenaw Bay													
Laguna Pueblo													
Lower Brule Sioux	X	X	X	X	X	X							
Lummi													
Muckleshoot	X	X	X	X	X		X				X	X	Emo-
Navajo	X	X	X	X	X	X	X			X			tional
Northern Cheyenne	X	X	X										Abuse
Oglala Sioux	21[1]	X	X					X	X	X			Drunk-
Paiute (Burns Paiute Reservation)													ard,
Papago	X	X	X	X			X		X		X	X	etc.
Pima Maricopa (Salt River)	X	X	X	X	X	X	X			X			
Port Gamble Klallam													
Pyramid Lake Paiute													
Red Lake Band of Chippewas	X	X	X	X	X	X		X				X	
Rosebud Sioux	X	X	X	X	X	X							
San Carlos Apache													
San Ildefonso Pueblo													
Shoshone and Bannock	X	X	X	X	X	X							
Sisseton Wahpeton Sioux	X	X	X	X	X	X							
Snohomish													
Southern Ute													
Spokane													
Standing Rock Sioux	X	X	X	X	X	X							
Swinomish													
Three Affiliated Tribes of Ft. Berthold	X	X	X	X		X							
Turtle Mountain Chippewa	X	X	X	X	X	X							
Walker River Tribe													
White Mountain Apache	X	X	X						X				
Yakima													
Yavapai-Apache													
Zuni	X	X	X		X								
Totals	24	25	25	17	17	16	5	4	4	4	2	3	

1 = Oglala Sioux use age of 21.

TABLE 5

WHO MAY REPORT

	Anyone	Police	Probation/ Juvenile Officer	Parent	Guardian	Agency
Acoma Pueblo						
Ak Chin						
Blackfeet						
Cheyenne River Sioux						
Chippewa Cree						
Coeur d'Alene						
Confederated Salish-Kootenai						
Confederated Tribes of Warm Springs						
Crow						
Crow Creek Sioux						
Devil's Lake Sioux						
Duck Valley Paiute and Shoshone						
Fort McDermitt Paiute and Shoshone						
Fort Peck Assiniboine-Sioux						
Gros Ventres-Assiniboine						
Hopi						
Hualapai						
Isleta Pueblo						
Jicarilla Apache	X	X	X[2]			
Kalispel						
Keweenaw Bay						
Laguna Pueblo						
Lower Brule Sioux						
Lummi						
Muckleshoot		X[2]				
Navajo	X	X[4]	X[3]			
Northern Cheyenne						
Oglala Sioux	X[2]					
Paiute (Burns Paiute Reservation)						
Papago	X		X[3]			
Pima Maricopa (Salt River)						
Port Gamble Klallam						
Pyramid Lake Paiute						
Red Lake Band of Chippewas	X					X
Rosebud Sioux						
San Carlos Apache						
San Ildefonso Pueblo						
Shoshone and Bannock				X	X	
Sisseton Wahpeton Sioux						
Snohomish						
Southern Ute						
Spokane						
Standing Rock Sioux	X[2]	X[2]	X[2]	X		
Swinomish						
Three Affiliated Tribes of Ft. Berthold						
Turtle Mountain Chippewa	X[2]	X[2]	X[2]			
Walker River Tribe						
White Mountain Apache						
Yakima						
Yavapai-Apache						
Zuni	X		X[3]			
Totals	8	5	6	2	1	1

2 = On behalf of tribe and in child's best interest

3 = Probation officer prepares and files petition after initial report is made

4 = Police officer required to report

TABLE 6
EMERGENCY REMOVAL

	By Court	Officer	Anyone
Acoma Pueblo			
Ak Chin			
Blackfeet			
Cheyenne River Sioux			
Chippewa Cree			
Coeur d'Alene	X	X	
Confederated Salish-Kootenai			
Confederated Tribes of Warm Springs			
Crow			
Crow Creek Sioux			
Devil's Lake Sioux			
Duck Valley Paiute and Shoshone			
Fort McDermitt Paiute and Shoshone			
Fort Peck Assiniboine-Sioux			
Gros Ventres-Assiniboine			
Hopi			
Hualapai			
Isleta Pueblo			
Jicarilla Apache			
Kalispel			
Keweenaw Bay			
Laguna Pueblo			
Lower Brule Sioux			
Lummi			
Muckleshoot	X	X	
Navajo			X
Northern Cheyenne			
Oglala Sioux			
Paiute (Burns Paiute Reservation)	X		
Papago			
Pima Maricopa (Salt River)			
Port Gamble Klallam			
Pyramid Lake Paiute			
Red Lake Band of Chippewas	X	X	
Rosebud Sioux			
San Carlos Apache			
San Ildefonso Pueblo			
Shoshone and Bannock			
Sisseton Wahpeton Sioux			
Snohomish			
Southern Ute			
Spokane			
Standing Rock Sioux			
Swinomish			
Three Affiliated Tribes of Ft. Berthold			
Turtle Mountain Chippewa			
Walker River Tribe			
White Mountain Apache			
Yakima			
Yavapai-Apache			
Zuni	X		
Totals	5	3	1

TABLE 7

INTERDISCIPLINARY APPROACH

	Court to Cooperate with Other Agencies	Social Study Required Pre-disposition
Acoma Pueblo		
Ak Chin		
Blackfeet		X
Cheyenne River Sioux		
Chippewa Cree		
Coeur d'Alene		
Confederated Salish-Kootenai		
Confederated Tribes of Warm Springs		
Crow		
Crow Creek Sioux		
Devil's Lake Sioux		X
Duck Valley Paiute and Shoshone		
Fort McDermitt Paiute and Shoshone		
Fort Peck Assiniboine-Sioux		X
Gros Ventres-Assiniboine		X
Hopi		
Hualapai	X	X
Isleta Pueblo		
Jicarilla Apache		
Kalispel		
Keweenaw Bay		
Laguna Pueblo		
Lower Brule Sioux		X
Lummi		
Muckleshoot	S, F, Pub., Pri.	
Navajo	T, S, F, Pub., Pri.	
Northern Cheyenne		X
Oglala Sioux		
Paiute (Burns Paiute Reservation)		
Papago	F, Pub., Pri.	
Pima Maricopa (Salt River)		X
Port Gamble Klallam		
Pyramid Lake Paiute		
Red Lake Band of Chippewas		X
Rosebud Sioux		
San Carlos Apache		
San Ildefonso Pueblo		
Shoshone and Bannock		X
Sisseton Wahpeton Sioux		
Snohomish		
Southern Ute		
Spokane		
Standing Rock Sioux		X
Swinomish		
Three Affiliated Tribes of Ft. Berthold		
Turtle Mountain Chippewa		
Walker River Tribe		
White Mountain Apache		
Yakima		
Yavapai-Apache		
Zuni		X
Totals	4	12

T = tribal
S = state
F = federal

Pub. = public agency
Pri. = private charitable agency

TABLE 8

MEDICAL EXAMS COURT-ORDERED

	Child	Parent	Emergency
Acoma Pueblo			
Ak Chin			
Blackfeet			
Cheyenne River Sioux			
Chippewa Cree			
Coeur d'Alene			
Confederated Salish-Kootenai			
Confederated Tribes of Warm Springs			
Crow			
Crow Creek Sioux			
Devil's Lake Sioux			
Duck Valley Paiute and Shoshone			
Fort McDermitt Paiute and Shoshone			
Fort Peck Assiniboine-Sioux			
Gros Ventres-Assiniboine			
Hopi			
Hualapai	M&P	M	X
Isleta Pueblo			
Jicarilla Apache	M		
Kalispel			
Keweenaw Bay			
Laguna Pueblo			
Lower Brule Sioux			
Lummi			
Muckleshoot			
Navajo	M&P	M&P	X
Northern Cheyenne			
Oglala Sioux	M		
Paiute (Burns Paiute Reservation)			
Papago			
Pima Maricopa (Salt River)			
Port Gamble Klallam			
Pyramid Lake Paiute			
Red Lake Band of Chippewas	M&P		
Rosebud Sioux			
San Carlos Apache			
San Ildefonso Pueblo			
Shoshone and Bannock			
Sisseton Wahpeton Sioux			
Snohomish			
Southern Ute			
Spokane			
Standing Rock Sioux	M		M
Swinomish			
Three Affiliated Tribes of Ft. Berthold			
Turtle Mountain Chippewa	M		X
Walker River Tribe			
White Mountain Apache			
Yakima			
Yavapai-Apache			
Zuni	M&P	M&P	X
Totals			4

M = Medical
P = Psychological

TABLE 9
HEARING

	Closed	Informal	Judicial	Starts Proceeding
Acoma Pueblo				
Ak Chin				
Blackfeet	X	X		X
Cheyenne River Sioux	X	X		X
Chippewa Cree				
Coeur d'Alene				
Confederated Salish-Kootenai				
Confederated Tribes of Warm Springs	X	X		
Crow				
Crow Creek Sioux	X	X		X
Devil's Lake Sioux	X	X		
Duck Valley Paiute and Shoshone				X
Fort McDermitt Paiute and Shoshone				
Fort Peck Assiniboine-Sioux	X	X		
Gros Ventres-Assiniboine	X	X	X	
Hopi				
Hualapai	X	X	X	X
Isleta Pueblo				
Jicarilla Apache				X
Kalispel				
Keweenaw Bay				
Laguna Pueblo				
Lower Brule Sioux	X	X		
Lummi				
Muckleshoot	X	X	X	X
Navajo	X	X	X	X
Northern Cheyenne	X		X	
Oglala Sioux	X	X		X
Paiute (Burns Paiute Reservation)	X	X	X	
Papago	X	X	X	X
Pima Maricopa (Salt River)	X	X	X	
Port Gamble Klallam				
Pyramid Lake Paiute				
Red Lake Band of Chippewas	X	X	X	
Rosebud Sioux	X	X		X
San Carlos Apache				
San Ildefonso Pueblo				
Shoshone and Bannock	X	X	X	X
Sisseton Wahpeton Sioux				
Snohomish				
Southern Ute				
Spokane				
Standing Rock Sioux	X	X	X	X
Swinomish				
Three Affiliated Tribes of Ft. Berthold	X	X		X
Turtle Mountain Chippewa	X	X	X	X
Walker River Tribe				
White Mountain Apache	X	X	X	X
Yakima				
Yavapai-Apache				
Zuni	X	X	X	X
Totals	24	23	14	17

TABLE 10

RIGHTS OF PARTIES

	Right to Counsel	Right to Appointed Counsel	Right to Introduce Evidence	Right to Examine Witness	Right to be Heard on One's Behalf	Right to Appeal
Acoma Pueblo						
Ak Chin						
Blackfeet						
Cheyenne River Sioux						
Chippewa Cree						
Coeur d'Alene						
Confederated Salish-Kootenai						
Confederated Tribes of Warm Springs						
Crow						
Crow Creek Sioux	P&C					
Devil's Lake Sioux						
Duck Valley Paiute and Shoshone						
Fort McDermitt Paiute and Shoshone						
Fort Peck Assiniboine-Sioux						
Gros Ventres-Assiniboine						
Hopi						
Hualapai	P&C					
Isleta Pueblo						
Jicarilla Apache						
Kalispel						
Keweenaw Bay						
Laguna Pueblo						
Lower Brule Sioux						
Lummi						
Muckleshoot	ALL		ALL	ALL	ALL	
Navajo	ALL					
Northern Cheyenne		P&C				
Oglala Sioux						
Paiute (Burns Paiute Reservation)	ALL					
Papago	P&C	5	P&C	P&C	P&C	
Pima Maricopa (Salt River)	P&C					P&C
Port Gamble Klallam						
Pyramid Lake Paiute						
Red Lake Band of Chippewas	P&C		ALL	ALL	ALL	
Rosebud Sioux						
San Carlos Apache						
San Ildefonso Pueblo						
Shoshone and Bannock						
Sisseton Wahpeton Sioux						
Snohomish						
Southern Ute						
Spokane						
Standing Rock Sioux						
Swinomish						
Three Affiliated Tribes of Ft. Berthold	P&C	P&C				
Turtle Mountain Chippewa		C				
Walker River Tribe						
White Mountain Apache	P	5				
Yakima						
Yavapai-Apache						
Zuni						
Totals						

P = Parent
C = Child
ALL = All Parties

5 = Court may appoint counsel in its discretion for parent and/or child.

TABLE 11

GUARDIAN AD LITEM APPOINTMENT FOR CHILD

	Mandatory	Discretionary	Burden of Proof
Acoma Pueblo			
Ak Chin			
Blackfeet			
Cheyenne River Sioux			
Chippewa Cree			
Coeur d'Alene	X[6]	X	PE
Confederated Salish-Kootenai			
Confederated Tribes of Warm Springs			
Crow			
Crow Creek Sioux			
Devil's Lake Sioux			
Duck Valley Paiute and Shoshone			
Fort McDermitt Paiute and Shoshone			
Fort Peck Assiniboine-Sioux			
Gros Ventres-Assiniboine			
Hopi			
Hualapai			
Isleta Pueblo			
Jicarilla Apache			
Kalispel			
Keweenaw Bay			
Laguna Pueblo			
Lower Brule Sioux			
Lummi			
Muckleshoot	X[6]		
Navajo		X	
Northern Cheyenne			C&C
Oglala Sioux			BI
Paiute (Burns Paiute Reservation)			
Papago			
Pima Maricopa (Salt River)			PE
Port Gamble Klallam			
Pyramid Lake Paiute			
Red Lake Band of Chippewas	X6	X	
Rosebud Sioux			
San Carlos Apache			
San Ildefonso Pueblo			
Shoshone and Bannock			
Sisseton Wahpeton Sioux			
Snohomish			
Southern Ute			
Spokane			
Standing Rock Sioux			
Swinomish			
Three Affiliated Tribes of Ft. Berthold		X	
Turtle Mountain Chippewa		X	
Walker River Tribe			
White Mountain Apache		X	C&C
Yakima			
Yavapai-Apache			
Zuni			
Totals	3	6	

6 = Where child is not represented by parent or interests of parent and child conflict
PE = Preponderance of the Evidence
C&C = Clear and Convincing Evidence
BI = Best Interests of the Child

TABLE 12

FACTORS TO CONSIDER IN MAKING PLACEMENT

	Child's Welfare	Child's Religion	Child's Tribe/Custom
Acoma Pueblo			
Ak Chin			
Blackfeet			
Cheyenne River Sioux			
Chippewa Cree			
Coeur d'Alene			
Confederated Salish-Kootenai			
Confederated Tribes of Warm Springs			
Crow			
Crow Creek Sioux			
Devil's Lake Sioux			
Duck Valley Paiute and Shoshone			
Fort McDermitt Paiute and Shoshone			
Fort Peck Assiniboine-Sioux			
Gros Ventres-Assiniboine			
Hopi			
Hualapai	X	X	
Isleta Pueblo			
Jicarilla Apache			
Kalispel			
Keweenaw Bay			
Laguna Pueblo			
Lower Brule Sioux			
Lummi			
Muckleshoot		X	X
Navajo		X	
Northern Cheyenne			
Oglala Sioux		X	
Paiute (Burns Paiute Reservation)			
Papago			
Pima Maricopa (Salt River)	X	X	
Port Gamble Klallam			
Pyramid Lake Paiute			
Red Lake Band of Chippewas		X	
Rosebud Sioux			
San Carlos Apache			
San Ildefonso Pueblo			
Shoshone and Bannock			
Sisseton Wahpeton Sioux			
Suohomish			
Southern Ute			
Spokane			
Standing Rock Sioux			
Swinomish			
Three Affiliated Tribes of Ft. Berthold		X	
Turtle Mountain Chippewa		X	
Walker River Tribe			
White Mountain Apache			
Yakima			
Yavapai-Apache			
Zuni	X		X
Totals	3	8	2

TABLE 13

COMMITMENT

	Family Member	Member of Tribe	Other Indian Families	Least Restrictive Setting	Home With Protective Supervision	Shelter Care	Foster Home	School	Responsible Person
Acoma Pueblo									
Ak Chin									
Blackfeet									
Cheyenne River Sioux									
Chippewa Cree									
Coeur d'Alene									
Confederated Salish-Kootenai									
Confederated Tribes of Warm Springs									
Crow									
Crow Creek Sioux									
Devil's Lake Sioux									
Duck Valley Paiute and Shoshone									
Fort McDermitt Paiute and Shoshone									
Fort Peck Assiniboine-Sioux									
Gros Ventres-Assiniboine									
Hopi									
Hualapai									
Isleta Pueblo									
Jicarilla Apache					X			X	X
Kalispel									
Keweenaw Bay									
Laguna Pueblo									
Lower Brule Sioux									
Lummi									
Muckleshoot	X	X	X	X	X	X	X		
Navajo	X				X			X	X
Northern Cheyenne									
Oglala Sioux					X	X		X	X
Paiute (Burns Paiute Reservation)	X				X	X	X		
Papago									
Pima Maricopa (Salt River)									
Port Gamble Klallam									
Pyramid Lake Paiute									
Red Lake Band of Chippewas					X		X		X
Rosebud Sioux									
San Carlos Apache									
San Ildefonso Pueblo									
Shoshone and Bannock									
Sisseton Wahpeton Sioux									
Snohomish									
Southern Ute									
Spokane									
Standing Rock Sioux	X				X	X	X	X	X
Swinomish									
Three Affiliated Tribes of Ft. Berthold									
Turtle Mountain Chippewa	X				X	X	X	X	
Walker River Tribe									
White Mountain Apache	X				X		X	X	X
Yakima									
Yavapai-Apache									
Zuni	X	X	X		X	X		X	X
Totals	7	2	2	1	10	6	6	7	7

TABLE 14

REMOVAL OF CHILD FROM RESERVATION

	Allowed	Agree to Return on Court Request	Signed Agreement	Tribal Council Consent Required	Tribal Welfare Consent Required	Court's Consent Required
Acoma Pueblo						
Ak Chin						
Blackfeet	X	X				
Cheyenne River Sioux	X	X				
Chippewa Cree						
Coeur d'Alene						
Confederated Salish-Kootenai						
Confederated Tribes of Warm Springs						
Crow						
Crow Creek Sioux						
Devil's Lake Sioux	X	X				
Duck Valley Paiute and Shoshone						
Fort McDermitt Paiute and Shoshone						
Fort Peck Assiniboine-Sioux	X	X				
Gros Ventres-Assiniboine	X	X				
Hopi						
Hualapai	X					X
Isleta Pueblo						
Jicarilla Apache	X	X				
Kalispel						
Keweenaw Bay						
Laguna Pueblo						
Lower Brule Sioux	X	X				
Lummi						
Muckleshoot	X		X			
Navajo						
Northern Cheyenne						
Oglala Sioux						
Paiute (Burns Paiute Reservation)						
Papago						
Pima Maricopa (Salt River)	X					
Port Gamble Klallam						
Pyramid Lake Paiute						
Red Lake Band of Chippewas	X			X		
Rosebud Sioux						
San Carlos Apache						
San Ildefonso Pueblo						
Shoshone and Bannock	X	X				
Sisseton Wahpeton Sioux						
Snohomish						
Southern Ute						
Spokane						
Standing Rock Sioux	X	X				
Swinomish						
Three Affiliated Tribes of Ft. Berthold	X	X				
Turtle Mountain Chippewa	X	X		X	X	X
Walker River Tribe						
White Mountain Apache						
Yakima						
Yavapai-Apache						
Zuni						
Totals	15	11	1	2	1	2

TABLE 15

REVIEW OF CASE: FREQUENCY

	Quarterly	6 Months	Periodic	Court	Placement
Acoma Pueblo					
Ak Chin					
Blackfeet					
Cheyenne River Sioux					
Chippewa Cree					
Coeur d'Alene					
Confederated Salish-Kootenai					
Confederated Tribes of Warm Springs					
Crow					
Crow Creek Sioux					
Devil's Lake Sioux					
Duck Valley Paiute and Shoshone					
Fort McDermitt Paiute and Shoshone					
Fort Peck Assiniboine-Sioux					
Gros Ventres-Assiniboine					
Hopi					
Hualapai		X[7]			
Isleta Pueblo					
Jicarilla Apache	X[7]				X
Kalispel					
Keweenaw Bay					
Laguna Pueblo					
Lower Brule Sioux					
Lummi					
Muckleshoot		X			
Navajo		X		X	
Northern Cheyenne					
Oglala Sioux			X		X
Paiute (Burns Paiute Reservation)					
Papago					
Pima Maricopa (Salt River)		X[7]		X	
Port Gamble Klallam					
Pyramid Lake Paiute					
Red Lake Band of Chippewas					
Rosebud Sioux	X				X
San Carlos Apache					
San Ildefonso Pueblo					
Shoshone and Bannock	X[7]				X
Sisseton Wahpeton Sioux					
Snohomish					
Southern Ute					
Spokane					
Standing Rock Sioux	X[7]				X
Swinomish					
Three Affiliated Tribes of Ft. Berthold			X		
Turtle Mountain Chippewa			X		X
Walker River Tribe					
White Mountain Apache					
Yakima					
Yavapai-Apache					
Zuni			X		
Totals	4	4	4	2	6

7 = Review can be more frequent if court requires, but in no event shall be longer than the period stated.

TABLE 16

TERMINATION OF PARENTAL RIGHTS: WHO MAY FILE

	Parent's Preferred Right to Custody	Parent	Guardian	Agency	Child	Anyone w/ interest	One Parent Against the Other
Acoma Pueblo							
Ak Chin							
Blackfeet		X	X	X			
Cheyenne River Sioux							
Chippewa Cree							
Coeur d'Alene							
Confederated Salish-Kootenai							
Confederated Tribes of Warm Springs							
Crow							
Crow Creek Sioux							
Devil's Lake Sioux		X	X				X
Duck Valley Paiute and Shoshone							
Fort McDermitt Paiute and Shoshone							
Fort Peck Assiniboine-Sioux		X	X				X
Gros Ventres-Assiniboine		X	X	X	X	X	X
Hopi							
Hualapai	X						
Isleta Pueblo							
Jicarilla Apache							
Kaibpel							
Keweenaw Bay							
Laguna Pueblo							
Lower Brule Sioux		X	X				X
Lummi							
Muckleshoot		X					
Navajo	X						
Northern Cheyenne	X						
Oglala Sioux							
Paiute (Burns Paiute Reservation)		X					X
Papago							
Pima Maricopa (Salt River)	X					X	
Port Gamble Klallam							
Pyramid Lake Paiute							
Red Lake Band of Chippewas		X					
Rosebud Sioux							
San Carlos Apache							
San Ildefonso Pueblo							
Shoshone and Bannock							
Sisseton Wahpeton Sioux							
Snohomish							
Southern Ute							
Spokane							
Standing Rock Sioux							
Swinomish							
Three Affiliated Tribes of Ft. Berthold							
Turtle Mountain Chippewa							
Walker River Tribe							
White Mountain Apache	X						
Yakima							
Yavapai-Apache							
Zuni	X						
Totals	6	8	5	2	1	2	5

TABLE 17

TERMINATION OF PARENTAL RIGHTS: GROUNDS

	Neglect	Abandonment	Parent Unfit	Trial Period Fails	Abuse	Parent Has Lost Civil Liberty	Refuse to Provide	Sex Abuse
Acoma Pueblo								
Ak C[illegible]a								
Blackfeet	X	X						
Cheyenne River Sioux								
Chippewa Cree								
Coeur d'Alene								
Confederated Salish-Kootenai								
Confederated Tribes of Warm Springs								
Crow								
Crow Creek Sioux								
Devil's Lake Sioux	X	X	X				X	
Duck Valley Paiute and Shoshone								
Fort McDermitt Paiute and Shoshone								
Fort Peck Assiniboine-Sioux								
Gros Ventres-Assiniboine	X	X						
Hopi								
Hualapai		X[9]	X	X				
Isleta Pueblo								
Jicarilla Apache								
Kalispel								
Keweenaw Bay								
Laguna Pueblo								
Lower Brule Sioux								
Lummi								
Muckleshoot		X			X			X
Navajo		X[9]	X	X				
Northern Cheyenne	X	X						
Oglala Sioux								
Paiute (Burns Paiute Reservation)	X	X[9]	X	X	X		X	
Papago		X[9]		X				X
Pima Maricopa (Salt River)	X	X[9]	X		X	X	X	
Port Gamble Klallam								
Pyramid Lake Paiute								
Red Lake Band of Chippewas	X	X	X	X	X		X	
Rosebud Sioux								
San Carlos Apache								
San Ildefonso Pueblo								
Shoshone and Bannock	X	X	X			X	X	
Sisseton Wahpeton Sioux								
Snohomish								
Southern Ute								
Spokane								
Standing Rock Sioux	X	X	X			X	X	
Swinomish								
Three Affiliated Tribes of Ft. Berthold								
Turtle Mountain Chippewa								
Walker River Tribe								
White Mountain Apache		X	X				X	
Yakima								
Yavapai-Apache								
Zuni		X[9]	X	X			X	
Totals	9	15	10	6	4	3	8	2

9 = Tribe creates rebuttable presumption of abandonment where there is no communication between parent and child for a stated period.

APPENDIX C

COMPILATION OF TRIBAL CODE PROVISIONS PERTAINING TO CHILD ABUSE AND NEGLECT

Note: Code provisions include jurisdictional statements, domestic relations, criminal law, juvenile and child welfare provisions that are in the database for this report.

Acoma Pueblo, Law and Order Code, Ch.V, §§ 22 to 23, 29.

Ak-Chin, Law and Order Code, Ch.4, §§ 4.55, -.60, -.66 to .70, -.73; Ch. 5, § 5.1 (1975).

Blackfeet, Law and Order Code, Ch. 1, § 1; Ch. 3, §§ 6 (A), (B)(2) to (4), (C), (D)(1) to (3), (G), (H); Ch.5, §§ 24 to 26; Ch.7, (F) (1967).

Cheyenne River Sioux, Tribal Code, Title 4, Ch.1, § 9; Title 5, Ch.4, §§ 49(B) to (D), 54, 55(F); Title 7, Ch.7, § 48, Ch. 8, § 52; Title 9, Ch.2, §§ 12, 14, 16.

Chippewa-Cree, Code of Indian Offenses, Ch. 1, §§ 1, 26 to 28; (1966).

Code of Federal Regulations, 25 C.F.R. §§ 11.2, -.55, -.64, -.64c, -.65, -.66 (1979).

Coeur d' Alene, Law and Order Code, Ch. 1, § 2(a); Ch. 4, §§ 27 to 29 (as amended by Res. No. CDA91(66)(1966); Ch. 6, §§ 6- 11.01, -13.01 to .02, -16.01, -19.01; Ch. 9, §§ 9-1.01, -2.01, -3.01, -4.01, -5.01, -6.01.

Confederated Salish-Kootenai, Law and Order Code, Ch. 1, § 2, Ch. 2, §§ 1, 24, 28 to 30.

Confederated Tribes of Warm Springs, Law and Order Code, Ch. I, § 2; Ch. II, § 1; Ch. IV, §§ 30 to 32; Ch. VII, § 5 (1966).

Crow, Tribal Code, Ch. 3, § 3-304.

Crow Creek Sioux, Law and Order Code, §§ 04-01-01; §§ 10-07-01, -21-01 to -02, -44-01, -45-01; §§ 11-01-01 (1), (2), (4), -02-01, -04-01 (1)(a) to (C), -04-01 (6).

Devils' Lake Sioux, Code of Laws, Ch. I, § 1.2 (b) to (c); Ch. IV, § 4.2, -.4, -.6, -.7 (b)(1) to (4); Ch. VI, §§ 6.1(d), -.6, -.7(f); Ch. IX, §§ 9.10, -.19 to -.20.

Duck Valley Paiute and Shoshone, Law and Order Code, Ch. 2, § 1; Ch. 5, §§ 27 to 29.

Fort McDermitt Paiute and Shoshone, Law and Order Code, Ch. 2, §§ 1, 25 to 27 (1942).

Fort Peck Assiniboine-Sioux, Law and Order Code, Ch. I, § 2(a)-(b); Ch. II, §§ 2, 4, 6; Ch. VIII, §§ 19 to 20; Ch. XI, §§ 1 (d), 6, 7(f).

Gros Ventres-Assiniboine Law and Order Code, Ch. I, § 2.1; Ch. V, §§ 27, 28, 42; Ch. VI, §§ 3.1, 3.2(e)(1)-(5), 3.4(a) to (c)(1)-(5), 3.8, 3.9; Ch. VII, §§ 2, 6.

Hopi, Tribal Code, tit. III, Ch. 2, § 3.2.2; Ch. 3, §§ 3.3.1, .3.11, .3.13, .3.14, .3.30, .3.31 (1972).

Hualapai, Law and Order Code, Ch. 2 § 2.1; Ch. 6, §§ 6.1, .3, .4, .7, .11, .12, .14, .17, .52,; Ch. 7, §§ 7.3, .7, .11(d)(5), .11(e)(5), .12(a), .12(b), .12(d), .12(g), .15, .21, .23(a), .23(c), .23(j), .27 (o)(1)-(7)(1975).

Isleta Pueblo, Law and Order Code, §§ 1(a)-(b), 55, 56, 57.

Jicarrilla Apache, Tribal Code, Ch. I, § 1.2; Ch. VII, § 1(d)(1)-(5), 2, 3, 7(c), 7(d), 7(f), 10; Ch. XII, §§ 1, 12, 14, 15, 24, 36.

Kalispel, Law and Order Code,Ch. 1, §§ 2, 27, 28, 29 (1967).

Keweenaw Bay, Code, tit. I, Ch. 1.5, §§ 1.501.1 to .503, Ch. 1.20, §§ 1.2023, .2024, .2030 (1974).

Laguna Pueblo, Judicial and Law and Order Code, Ch. I, § 2; Ch. III, §§ 8, 9, 18, 19; Ch. IV, § 22 (1968).

Lower Brule Sioux, Tribal Code, Ch. I, S 2; Ch. IV, §§ 1(d), 2, 6, 7(f); Ch. V, §§ 2, 4; (Penal Code), §§ 23, 24 (as amended, Ordinance LB-66E (1966)).

Lummi, Law and Order Code, Ch. I, § 2(a) (as amended, Ordinance L-35 (1969)).

Muckleshoot, Code, tit. I, §§ 1.02.01, 5.01.18, .19; tit. XII, §§ 1(13), 2(1), 3(3), 4, 6(c), 7 14, 17(4)(A)-(E), (G), (I), 18, 19(2).

Navajo, Tribal Code, tit. 9 Ch. 11, §§ 1001, 1002(q), 1053, 1055, 1057, 1151, 1156, 1163, 1174, 1180, 1184, 1185, 1191(2)-(5), 1192, 1198, 1251, 1253; tit. 17, Ch. 3, §§ 204, 206, 275, 321, 452, 453, 455 (1977).

Northern Cheyenne, Juvenile Code, §§ 1(1)-(5), 4(21), 8, 11(2), 24, 28(1), (3), (7), 29, 36(1), 38; Law and Order Code, Ch. 1, §§ 29, 30, 32, 44, 50; Ordinance 4(69)(1968).

Oglala Sioux, Revised Code, Ch. 1, § 1; Ch. 2, § 20; Ch. 3(a), §§ 54.18, .19, .22, .26, .27, .34, .42; Ch. 6, §§ 64(a)-(b), 64, 78, 79.

Paiute, Tribal Law and Order Code, tit. 1, §§ 3:01:010; tit. 5, §§ 5:05:100, :110, :120, :130, :140; Resolution 77-17, §§ 419.476, .482(1)-(3), .498(1), (2), .507, .523(1)-(4).

Papago, Children's Code, Ch. I, §§ 01(B)(1)-(7), 02(A)-(D), 07(B), 12(A)-(E); Ch. III, § 52(1)-(4); Ch. V, § 71.

Pima Maricopa (Salt River), Law and Order Code, Ch. 1, § 1.1, Ch. 2, § 2.1; Ch. 12, §§ 12.11(d)(1), .12(a), (b), (d), (g), (h)(2), (i), .14, .15, .21, .23(a), (c), (i), .25, .27(q)(1)-(7).

Port Gamble Klallam, Law and Order Code, tit. 1, Ch. 1.2, § 1.2.01.

Pyramid Lake Paiute, Law and Order Code, Ch. 1, § 1; Ch. 2, § 1; Ch. 5, §§ 24 to 26.

Red Lake Band of Chippewas, Law and Order Provisions, Juvenile Court Code, §§ I(2), II(7), VI, VII, IX(1), X(4), XIII, XIV(1)-(3), (5), XVI(1), XIX(3), XXI(1)(A)-(C), XXV(B), XXVI(1).

Rosebud Sioux, Law and Order Code, Ch. 2, § 1; Ch. 5, §§ 19 to 20(A); Ch. 11, §§ 1(d), 2, 6, 10.

San Carlos Apache, Revised Law and Order Code, Ch. 2, § 2.1; Ch. 6, §§ 6.20 -.22.

San Ildefonso Pueblo, Law and Order Code, Ch. I, §§ 2(A), (B), Ch. V, §§ 22 to 24.

Shoshone and Bannock, Law and Order Code, Ch. I, §§ 2.2, .3, Ch. II, §§ 1, 1.2; Ch. V, §§ 29, 30, 39, 40; Ch. VI, §§ 6.1, .2(5), .4, .8, .9, .10; Ch. VIII, §§ 1(6), 6, 7.6, 10.

Sisseton-Wahpeton Sioux, Law and Order Code, Ch. V, §§ 1(d), 2.

Snohomish, Tulalip Law and Order Code, Ch. I, § 2, Ch. 2, § 1; Ch. IV, §§ 24 to 26.

Southern Ute Tribe, Law and Order Code, Ch. 1, § 1; Ch. 2, § 1, Ch. 6, §§ 27 to 29.

Spokane, Law and Order Code, Ch. I, § 2; Ch. II, § 1; Ch. IV, § 1; Ch. IV, § 24, 27 to 29 (1963)

Standing Rock Sioux, Code of Justice, Ch. I, § 1.2; Ch. IV, §§ 4.2, .4, .6, .7(b); Ch. VI, §§ 6.1(d), .2, .3, .6, .7(c), (d), (f), .10; Ch. IX, §§ 9.18, .19.

Swinomish, Law and Order Code, §§ 24 to 26.

Three Affiliated Tribes of Fort Berthold, Code of Laws, Ch. I, § 1(a); Ch. IV, §§ 35, 36, 37 (as amended by Resolution 67-10 (1967)); Ch. VIII, §§ 1(a), (d), (f), 2 (b), (g), (i), (j), (n), (r).

Turtle Mountain Band of Chippewa, Code, tit. 1, Ch. 1.20, §§ 1.2024, .2025, .2034; tit. 2, Ch. 2.01, § 2.0102; tit. 5, Ch. 5.01, §§ .0101, .0104, .0106, .0109; Ch. 5.02, §§ .0202, .0204, .0208, .0209(c), .0206.1, .0217, .0211, .0216 (1976).

Walker River Tribe, Law and Order Code, Ch. II, §1; Ch. V, §§ 24 to 26.

White Mountain Apache, Law and Order Code, Ch. I, part V, §§ 15.1, .4, .5; Ch. IV, part I, §§ 41.1(6), part V, §§ 45.1(B), part VI, §§ 46.1(a), (c), part VII, §§ 47.1, .9, part VIII, §§ 48.2, .4(A); Ch. V, part II, §§ 52.16, .17, .18, .29 (1974).

Yakima, Law and Order Code, Ch. 1, § 1; Ch. 2, § 1; Ch. 3, §§ 1, 8; Ch. 5, §§ 28, 31 to 33.

Yavapai Apache, Ordinance 2, Ch. II, § 1; Ordinance 3, Ch. I, §§ 26 to 28 (1951).

Zuni, Code, tit. I, §§ 1-2-3, -2-5 (revised 1978); tit. IV, §§ 4-4-61, -62, -64; tit. XI, §§ 9-1-1, -2(16), 9-3-1 (revised 1978), -6, -5-3, -4, -9-2(3), -5, -6, -10-4, -5, -11-1, -2, -4, -13-1(1) to (6), -15-1, -3.

Public Law 95-608
95th Congress

An Act

To establish standards for the placement of Indian children in foster or adoptive homes, to prevent the breakup of Indian families, and for other purposes.

Nov. 8, 1978
[S. 1214]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Child Welfare Act of 1978".

Indian Child Welfare Act of 1978.
25 USC 1901 note.

SEC. 2. Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

25 USC 1901.

(1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

Congress, responsibility for protection of Indians.

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

25 USC 1902.

SEC. 3. The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

Definitions.
25 USC 1903.

SEC. 4. For the purposes of this Act, except as may be specifically provided otherwise, the term—

(1) "child custody proceeding" shall mean and include—

(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 7 of the Alaska Native Claims Settlement Act (85 Stat. 688, 689);

43 USC 1606.

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b) in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 688, 689), as amended;

43 USC 1602.

(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(10) "reservation" means Indian country as defined in section 1151 of title 18, United States Code and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) "Secretary" means the Secretary of the Interior; and

(12) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

TITLE I—CHILD CUSTODY PROCEEDINGS

Indian tribes, exclusive jurisdiction over Indian child custody proceedings. 25 USC 1911.

SEC. 101. (a) An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: *Provided*, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

Foster care placement, court proceedings. 25 USC 1912.

SEC. 102. (a) In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: *Provided*, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court

shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13).

(c) Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Parental rights, voluntary termination. 25 USC 1913.

SEC. 103. (a) Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

25 USC 1914.

SEC. 104. Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of com-

petent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 101, 102, and 103 of this Act.

Adoptive placement of Indian children. 25 USC 1915.

SEC. 105. (a) In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(b) Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with—

(i) a member of the Indian child's extended family;

(ii) a foster home licensed, approved, or specified by the Indian child's tribe;

(iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: *Provided*, That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

Petition, return of custody. 25 USC 1916.

SEC. 106. (a) Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 102 of this Act, that such return of custody is not in the best interests of the child.

Removal from foster care home.

(b) Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this Act, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

25 USC 1917.

SEC. 107. Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement,

the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

Reassumption, jurisdiction over child custody proceedings. 25 USC 1918. 18 USC prec. 1151 note. 25 USC 1321. 28 USC 1360 note.

SEC. 108. (a) Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b)(1) In considering the petition and feasibility of the plan of a tribe under subsection (a), the Secretary may consider, among other things:

(i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;

(ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe;

(iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and

(iv) the feasibility of the plan in cases of multitribal occupation of a single reservation or geographic area.

(2) In those cases where the Secretary determines that the jurisdictional provisions of section 101(a) of this Act are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 101(b) of this Act, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 101(a) over limited community or geographic areas without regard for the reservation status of the area affected.

(c) If the Secretary approves any petition under subsection (a), the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a), the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

(d) Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 109 of this Act.

States and Indian tribes, agreements. 25 USC 1919.

SEC. 109. (a) States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such

revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

Improper removal of child from custody.
25 USC 1920.

SEC. 110. Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

25 USC 1921.

SEC. 111. In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this title, the State or Federal court shall apply the State or Federal standard.

Emergency removal of child.
25 USC 1922.

SEC. 112. Nothing in this title shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this title, transfer child to the jurisdiction of the appropriate Indian tribe, or restore child to the parent or Indian custodian, as may be appropriate.

Effective date.
25 USC 1923.

SEC. 113. None of the provisions of this title, except sections 101(a), 108, and 109, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after the enactment of this Act, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

TITLE II—INDIAN CHILD AND FAMILY PROGRAMS

25 USC 1931.

SEC. 201. (a) The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to—

(1) a system for licensing or otherwise regulating Indian foster and adoptive homes;

(2) the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreation activities, and respite care;

(4) home improvement programs;

(5) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;

(6) education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;

(7) a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and

(8) guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.

(b) Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection with funds provided under titles IV-B and XX of the Social Security Act or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for use under this Act. The provision or possibility of assistance under this Act shall not be a basis for the denial or reduction of any assistance otherwise authorized under titles IV-B and XX of the Social Security Act or any other federally assisted program. For purposes of qualifying for assistance under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing approval by a State.

42 USC 620, 1397.

Additional services.
25 USC 1932.

SEC. 202. The Secretary is also authorized to make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs which may include, but are not limited to—

(1) a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate State standards of support for maintenance and medical needs;

(2) the operation and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster and adoptive children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care; and

(4) guidance, legal representation, and advice to Indian families involved in child custody proceedings.

Funds.
25 USC 1933.

SEC. 203. (a) In the establishment, operation, and funding of Indian child and family service programs, both on and off reservation, the Secretary may enter into agreements with the Secretary of Health, Education, and Welfare, and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health, Education, and Welfare: *Provided*, That authority to make payments pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided advance by appropriation Acts.

(b) Funds for the purposes of this Act may be appropriated pursuant to the provisions of the Act of November 2, 1921 (42 Stat. 208), as amended. 25 USC 13.

SEC. 204. For the purposes of sections 202 and 203 of this title, the term "Indian" shall include persons defined in section 4(c) of the Indian Health Care Improvement Act of 1976 (90 Stat. 1400, 1401). 25 USC 1934. 25 USC 1603.

TITLE III—RECORDKEEPING, INFORMATION AVAILABILITY, AND TIMETABLES

SEC. 301. (a) Any State court entering a final decree or order in any Indian child adoptive placement after the date of enactment of this Act shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show— Final decree, information to be included. 25 USC 1951.

(1) the name and tribal affiliation of the child;
(2) the names and addresses of the biological parents;
(3) the names and addresses of the adoptive parents; and
(4) the identity of any agency having files or information relating to such adoptive placement.

Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended.

(b) Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child's tribe, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

SEC. 302. Within one hundred and eighty days after the enactment of this Act, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this Act. Effective date. Rules and regulations. 25 USC 1952.

TITLE IV—MISCELLANEOUS

Day schools.
25 USC 1961.

SEC. 401. (a) It is the sense of Congress that the absence of local convenient day schools may contribute to the breakup of Indian families.

Report to congressional committees.

(b) The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health, Education, and Welfare, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from the date of this Act. In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades.

Copies to each State.
25 USC 1962.

SEC. 402. Within sixty days after enactment of this Act, the Secretary shall send to the Governor, chief justice of the highest court of appeal, and the attorney general of each State a copy of this Act, together with committee reports and an explanation of the provisions of this Act.

25 USC 1963.

SEC. 403. If any provision of this Act or the applicability thereof is held invalid, the remaining provisions of this Act shall not be affected thereby.

Approved November 8, 1978.

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